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Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

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AFTERNOON SESSION.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Mayor, do you remember at the Chamber of Commerce meeting of December 27th of last year, or in your statement, and then at the Chamber of Commerce dinner immediately thereafter——

A. Well I was in the center of a question, Counselor, and I was not permitted to answer.

Q. Were you? I had forgotten that.

A. Yes. I would like to get that question. I was just about to answer it when the court adjourned.

MR. FRAZER: Do you remember what the question was? Could you read it?

THE REPORTER: I haven't it here, but the question referred to the strike at the steel plant and the Mayor said he would like to explain it to you.

A. Yes; and they adjourned then.

Q. Very well.

THE COURT: I almost always adjourn in the middle of a question.

Q. I had forgotten it hadn't been answered.

A. The question was in regards to the Crucible Steel. They have a plant in Jersey City of some eight hundred, six or seven or eight hundred men there, seven hundred, I think it was, and you asked me about that; that strike took place and it was handled just in the ordinary manner, in a police routine manner of handling strikes. Of course, we prohibited the mass picketing, which is not allowed in Jersey City, and we adjusted the number of pickets that was to take place, which was acceptable to the men.

And the strike was settled favorable to the men. I think it is only fair that I should say that Mr. McCombs,

who was president of that union, that local, paid quite a compliment to the officials and to the police, which was published in the newspapers, and then the following day the heads of the CIO went after Mr. McCombs, brought him into a meeting and insisted that he was to change his entire statement.

MR. FRAZER: Now, I think that this is not responsive.

A. Oh, yes, it is concerning this strike.

MR. FRAZER: No, not what Mr. McCombs said.

THE COURT: Unless you know of your own knowledge.

MR. MATTHEWS: He said it was in the paper.

THE COURT: Oh, I beg your pardon, I didn't hear that.

THE WITNESS: The papers published it.

MR. FRAZER: I don't see that that makes any difference, whether the papers published it.

A. Well, I think it is rather important, Counsel, to show the counsel the manner in which strikes are adjusted and that in Jersey City, particularly in the center of all this controversy the CIO strike was in progress.

Q. And that was settled?

A. That was settled.

Q. In an orderly way, indicating that the CIO is capable of handling its strikes in an orderly way?

A. And that the police are capable also of handling strikes in an orderly way without any disorder or any violence. But I wanted to show Mr. McCombs' letter in the newspapers complimenting the police and complimenting the officials.

Q. That is what I understand; there was an orderly settlement?

A. And then he put a denial in the papers two days after.

MR. FRAZER: I move that that be stricken out and I think the Mayor has fully answered my question.

A. (Continuing.) I wanted to show, Counselor, that the CIO officials demanded that he retract it and they made him retract it and they threatened him if he didn't retract it.

MR. FRAZER: May I ask that that be stricken out, your Honor?

THE COURT: Yes.

Q. Now, coming back to the period of December, 1937, Mayor, you made a statement which you have referred to before, and you also made an address before the Chamber of Commerce at its fiftieth banquet, as you recall?

A. Yes.

Q. And as I recall it, at that time you stated that the unrest in Jersey City started at the time of the seamen's strike, is that right?

A. That started.

Q. Now, that was the International Seamen's Union, was it not?

A. Yes.

Q. And that was the American Federation of Labor?

A. Prior to that it was.

Q. But it was at that time?

A. No, I don't think so.

Q. I was just wondering whether you have confused——

A. No, Harry Bridges was one of the first went over to the CIO.

Q. Harry Bridges was not in that union at that time.

A. But Harry Bridges was at the head of the seamen's union all over the country.

Q. Harry Bridges' union, Mayor, is the National Maritime Union, isn't it?

A. It is now.

Q. Yes.

A. I think that's the name.

Q. And this strike that you refer to as being the beginning of the labor troubles was the International Seamen's Union, and that was an A. F. of L. union.

A. I don't know whether that—it was one of Bridges' outfits.

Q. Well now, as a matter of fact, Bridges never came over, did he?

A. Oh, yes.

Q. To Jersey City?

A. No, but Bridges was in New York at the time. Why, the public press carried headlines for weeks about Bridges coming to New York to take over Joe Ryan's whole outfit, and to take it over to the seamen's strike, into the CIO.

Q. But Bridges at that time was representing the National Maritime Union?

A. From the coast?

Q. No; when he was in New York he was representing—that was his CIO union, the National Maritime Union.

MR. MATTHEWS: International, isn't it?

MR. FRAZER: No, sir.

A. No, you are in eror because——

Q. Well——

A. In Hoboken they arrested two of Bridge's men for highway robbery and assault, who was brought on by Bridges from the Coast, and got fourteen years for it.

Q. Now——

A. Their statement publicly states that Bridges was their superior.

Q. I don't know whether any of Bridges' men came in or not, but as a matter of fact the strike was not a Bridges' union, and there was a confusion because Bridges' union was the National Maritime Union, whereas the A. F. of L. was the International Seamen's Union. That was the one that was in that strike, wasn't it?

A. The Seamen's Union was in the strike.

Q. That's right.

A. On the eastern coast here?

Q. Yes. And it was the National Maritime Union, Bridges' union, that was in the strike on the West Coast, which you spoke about.

A. And do you say that Bridges had nothing to do, Counselor, with the Seamen's strike?

Q. Well, nothing to do with the International Seamen's Union?

A. Oh, you are in error, Counselor. Bridges is the supreme—he is the boss of it all.

Q. CIO, is it?

A. Yes, yes, he came on—he came on from the West Coast to take over Joe Ryan's outfit, which is the longshoremen's untfit, covering the entire East Coast, and he publicly stated that he was there for that purpose, head of the seamen's strike.

Q. Well, all right. Now let's—I understand you to say that prior to that you had no labor difficulties in Jersey City?

A. None that amounted to anything. We had the ordinary little labor disputes, which doesn't amount to anything, no bloodshed.

Q. Well, do you remember the Miller Furniture strike in 1935?

A. The what?

Q. The Miller Furniture Company?

A. The furniture company?

Q. Yes.

A. Where is that located?

Q. I will give you that in a minute. Don't you know the Miller Parlor Furniture Company in Jersey City, such a company?

A. Is that the Gray Furniture Company? Where is it located?

Q. That's what I am trying to find out, Mayor, but I don't seem to have a note of it.

THE COURT: I think it may be in this record somewhere.

Q. I am told that it is on Orient Avenue. Does that refresh your mind at all?

A. Yes, yes, I recall that. Is that the concern which moved from Brooklyn?

Q. 261 Orient Avenue, they came in from Brooklyn.

A. I think so.

Q. Yes. Now you had quite a little trouble there in '35, didn't you, with them?

A. Oh, I wouldn't say that it was trouble, Counselor. There was a lot of annoyance from this group that came from New York and Brooklyn, as usual. They wanted to start parades and mass picketing, and of all descriptions of that kind, and then they brought these young men over there that was publicity seekers, who started to make a lot of——

Q. Well, that was an A. F. of L. union, though, wasn't it?

A. I don't know.

Q. Well, in '35 the other union wasn't in existence, was it?

A. I presume it was.

Q. Yes.

A. I am not sure.

Q. Now, I have a record here from the police department of Jersey City, which is part of an exhibit, which would indicate that on December 16, 1936, there was a strike of the Baltimore Transfer Company which lasted up to February 10, 1937, Do you recall that strike?

A. At Baltimore, yes. They had a transfer station in Jersey City there.

Q. Well, there were a series of those companies at that time whose employees were striking, were there not?

A. Well, that was the teamsters, that was a teamsters' strike. I think you refer to.

Q. Yes, your records would indicate that there was the Langer Transport Corp., the Kasten Brothers Transportation Company, the Railway Trucking Company, the Baltimore Tranfer Company, all at that time. That was a pretty big strike, wasn't it?

A. Yes, I think it was settled very rapidly other than the Baltimore Transfer, I think there was some question and I think they moved out. I tried to prevail upon the men, I talked with the men and made a public statement, if I am quoted properly, and said that it was an outrage for these men to go on strike at a time when so many men was out of work and that it would be a great hardship upon the families of these men if the strike took place. Now, the day after 45 of the strikers or the proposed strikers—working men came to my office and pleaded with me to continue my attitude not to let the men strike because they felt that the hardship would fall upon them and their families, but I couldn't prevail, it was no use, the company moved out, but they moved back again after.

Q. What did you do with the Miller Parlor Furniture Company case?

A. Is that the one down below?

Q. That is the one that we were just referring to in Orient Avenue.

A. They came in Jersey City, we didn't know they were in Jersey City until a group came from Brooklyn and started to picket. We never knew there was such a company in Jersey City until then. Then, of course, we had to step in and police it. We had considerable annoyance there—I wouldn't say it was trouble, all these foreign groups coming from Brooklyn and New York to picket, create all sorts of scenes.

Q. Well, now you had another strike in the Crucible Steel when it was an A. F. of L. union, didn't you, in 1932 for something over a month?

A. I think that was the strike I appeared at, yes; we adjusted that.

Q. Now, do you remember anything about a group of teamsters and chauffeurs who were trying to organize a union in 1934?

A. You mean——

Q. In May, 1934.

A. The bus owners, the bus strikers.

Q. They were teamsters, chauffeurs and garagemen, trying to incorporate a union there.

A. The bus drivers, we had considerable trouble with the bus drivers.

Q. In '34.

A. No, I don't recall the date, the year rather. I disbanded that union. I found that four gangsters was the head of that union. I drove them out of the city and disorganized the union.

Q. Well, now, at that time you were quoted—I just wanted to see whether this refreshes your memory—in the "New York Times" of May 2, 1934, as having sent an order to Director Wolfe, Director of Public Safety he was then, wasn't he, Thomas J. Wolfe?

A. Yes.

Q. And you said at that time, according to the "New York Times," "The nightstick must prevail," remember saying that, "Every member of the police department shall be expected to do his full duty, if by chance he is thrown in conflict with any of these racketeers?" There is an explanatory parenthesis, group of teamsters, chauffeurs and garagemen, "who sought papers of incorporation." Does that refresh your memory at all?

A. But that is not the condition, Counselor, there was no incorporation; if that was an element that I classified as an undesirable element that was endeavoring to come in and take control of the labor movement, then if that language is properly quoted, which I have used that language very often, yes.

Q. You have?

A. Yes. Then it was because of that, because I have always made it a rule to protect the workingman, that is, the rank and file of the labor unions, against the invasion of dishonest leaders.

Q. Now, do you think the rest of this is correctly quoted? "I shall expect that the people of our city shall be protected against the invasion of their rights by such an element."

That sounds like you, doesn't it?

A. I think so.

Q. "It is my wish"——

A. I would like to know the element you refer to. That's just a little bit confusing.

Q. The element referred to apparently, was this group of teamsters, chauffeurs and garagemen, who were trying to incorporate a union.

A. Oh, I think—just a minute, now. We had quite a lot of difficulty. We had a lot of men who were assaulted and beaten over the head with blackjacks and knives and everything else, and we arrested quite a number of them. I think you are referring to that. And I think we went in there and endeavored to break up that whole outfit that was in there, taking over that union. That's what that was. And we did break them up. We turned it back to the union itself.

Q. According to the——

A. They were forcing themselves on the rank and file.

Q. According to the "Times'" report that quotes you, you went on to say: "It is my wish that every degree of police authority be exercised and those in the movement made to understand that there is no room within the boundaries of Jersey City for such characters to carry on their nefarious trade."

That sounds like you, too, doesn't it?

A. Well, it sounds very near like me.

Q. Now, let's go back a little further. In the "New York Times" of December 11, 1932——

MR. MATTHEWS: 1932, did you say?

MR. FRAZER: Yes.

MR. MATTHEWS: Thank you.

Q. You are quoted as having said that you were ready and willing to lead a movement for the protection of employers against so-called organized interference with their businesses.

A. I have always assumed that attitude. That has been always my attitude. My expression at that time, and my expression at the present time, is because I have felt that the man who provided the payroll has as much right to protection as the man who benefits by the payroll, because we can't have any employment if the payroll is destroyed. I have always tried to prevail and impress upon the workingmen that the man who provides the money to maintain his little family and support him is entitled to protection.

Q. Well, that——

A. Otherwise there would be no payroll.

Q. You were accurately quoted then, weren't you?

A. (The witness nodded.)

Q. Now, this was back in 1932, before the days of the Newspaper Guild, too?

A. Yes, but this Zerner, the young man that writes for that "Times," he is——

Q. Was Zerner there in '32?

A. Oh, he has been bad for twenty years; ever since he has been there.

Q. But this sounds like a fair quotation?

A. Yes, I presume that's in there.

Q. Now, you are quoted in that same newspaper account as saying, "I wish to make myself clear to every employer who has been visited by this terrorism that I will hereby guarantee to him if he will follow my suggestion that every ounce of protection will be given and that he need have no fear as to what the outcome of this controversy will be."

A. What year is that?

Q. That's 1932; December 10th. The statement was issued and appeared in the "Times" December 11th.

A. Let me clear that up, will you?

Q. Sure.

A. There was a trucking company by the name of M. & M.—it was McNulty—no, McArdle; a man named McArdle had a trucking company that was appraised at close to $500,000. He had, I think, twenty-four big motor trucks and so on. He had quite a prosperous business. McArdle went into the receivership and the receiver called to see me and told me about the conditions of the employees and the men that was handling his affair and his business. He told me that a truck would leave at eight o'clock in the morning and would never return until twelve at night, with one delivery. That would be time and a half or double time. The fact was that he was driven out of business. If he was to censure a man for intoxication, they brought his truck back and destroyed it by accidents or by being mishandled. He was set upon and he was assaulted. The result was that every time he made a complaint, five men walked into his place with guns in their pockets and threatened to kill him if he didn't shut his mouth, and put back to work these men. That is what brought my statement out. I went into that company and I broke it up and I arrested the ringleaders, and we did apply the night sticks, because we found it necessary to apply night sticks on an element of that character; and we will apply it again tomorrow if they make their appearance in their efforts to go to work and take over these various industries and business is destroyed.

Q. That is what you meant by thugs and rough-house representatives, when you advised them to be discharged, is that right?

A. Yes; to the extent that we arrested four of them and brought them before Vice-Chancellor Fallon and we charged them right in front of the Vice-Chancellor, who had appointed the receiver, and told him there who they were and what they consisted of.

Q. Now, in addition to those statements did you say this at the same time:

"The day has arrived when no man even dares to suggest whom he may hire or whom he may discharge."

A. That was the element—they took that man's business from $500,000 and he could not sell it for $25,000 the day we stepped in.

Q. "He" meaning the employer?

A. Mr. McArdle; and he lived in the same apartment house that I lived in, strange as it may be, and I never knew any of his difficulties or troubles.

Q. Going on: "He has not even the right to decide what the prevailing scale of wages should be in his particular business, in order to realize a fair profit on his investment."

Now, do you think that labor should not have anything to say about what their prevailing scale should be?

A. Labor has always had a right in Jersey City to legally, lawfully, function, and to do anything that they thought was beneficial to their cause. I have always advocated that. I have always helped in that direction. But the time had arrived that when certain elements got into labor, that was taking over all these industries, and demanding that they be considered in everything that took place in front of the men, to the extent in some instances they would insist upon playing double, they would insist upon playing for the men and playing with the industry—the result was that we had to drive them all out.

Q. And so you did drive them all out?

A. We drove them out, every one.

Q. Now, did you drive every one out whether they were guilty of this thuggery that you have been referring to, indiscriminately, because they were a member of that union?

A. No, no, no. I was pretty careful. I knew in what direction I was going, Counselor.

Q. How did you learn that?

A. From twenty-five years dealing with them. I know the workingmen of Jersey City, Counselor. I was raised

with them all. And I have done as much for labor in any direction as any public official in this country.

Q. What was that union——

A. I am not opposed to labor, Counselor.

Q. What was the union which you said left——

A. That was the Teamsters' Union.

Q. No, I don't mean that one, but you said a moment ago, before you got discussing this one, that there was a union which left and which subsequently came back.

MR. MATTHEWS: He didn't say it was a union. He said a concern.

MR. FRAZER: A concern. I beg your pardon. That's a slip of my tongue.

Q. A concern.

A. Well, that was the Baltimore Transfer.

Q. Yes.

A. There was no violence or no disorder. There was nothing. No comments about that strike. Those men were striking because——

Q. What made them go out?

A. Well, a general strike of the teamsters in that city and county for an increase in wage.

Q. And was that a proper strike?

A. Well, apparently, I would say 90 per cent. of the industries and their lawyers settled and adjusted their differences satisfactory to the workingman—all but the Baltimore Transfer, and they stated they could not settle it because it would put them out of business. So they had to move back to New York. Well, then they came back again in about three months.

Q. Was that the strike which brought about the removal of the Great Atlantic and Pacific Tea Company from Jersey City?

A. No, the Great Atlantic and Pacific, that trouble was fifteen years ago.

Q. That was still longer ago?

A. Oh, fifteen years ago.

Q. That was a labor difficulty, though, wasn't it?

A. Yes, yes. Some of it was.

Q. And that had to do with teamsters, too?

A. Teamsters. This is the same group.

Q. The same group?

A. Yes, that I had the trouble with the M. & M.

Q. So in that case the teamsters' group was not put out, was it?

A. No, there was a man named Hart that was the head of it, that was the man that caused all the trouble. He died since.

Q. Was he at the time of the Great Atlantic and Pacific trouble——

A. Yes, he was the head of that whole group.

Q. Yes.

A. And he was the man who caused all the trouble.

Q. Well, he wasn't put out at that time, was he?

A. No, it was later.

Q. Now, do you remember stating to the industry that came back, after it had left, "We took a hand in reorganizing labor without regard for national heads of organized labor themselves. The leaders who planted a feeling of hatred in the minds of the men are gone, and in their places are leaders with whom you can deal." Do you remember making such a statement?

A. No, I don't know—that was my mind, though. That was the condition that was brought about.

Q. That's what you had in mind when you changed after you——

A. Well, that condition was brought about—you see, there was quite a feeling of unrest in Jersey City, and in every other city. That was at the time that that racket business was at its full height all over the country, and of course we were blessed with it the same as every other city, and of course after I got the labor conditions so adjusted that I could invite industry back and that I could assure the

present heads of industries that was located in Jersey City that they could feel secured, that their investment would be protected, naturally I went in and tried to adjust affairs with them, and said, "Come on, let us move forward."

Q. Now, you referred the other day to the McClintic Marshall strike.

A. Yes.

Q. That was perhaps the most serious one you ever had, wasn't it?

A. That was the most serious one we ever had.

Q. And in that case it was the labor union which was the aggressor, wasn't it?

A. Yes.

Q. And wasn't the labor union at that time supported by your administration?

A. Yes. Will you allow me to explain this?

Q. Yes.

A. Theodore Brandle was the head of the ironworkers in the State of New Jersey, was the head of this local in Jersey City and Hudson County. Now, Theodore Brandle came to me and told me about the difficulties that he was having with the McClintic Marshall Company and that they were about to go into a $24,000,000 contract, I think with the State, for the Pulaski Highway.

Q. Yes; they were running open shop?

A. Yes, they were.

Q. Had been right along?

A. Yes, and he told me that his group headed by Mr. Moran had opposed McClintic Marshall all over the country and he wanted to know was there any possible chance of me taking up with Governor Moore at that time an adjustment whereby his people could be employed. He told me that he had several thousand men idle and that this job would probably employ seven or eight hundred men permanently for probably two years. I told him that I would do everything possible to see if we could make arrangements to get his men employed. I said to him then, I says, "The prevailing scale is $16. What is my under-

standing with you about the prevailing scale? They object, as I understand it, to the $16 scale. I understand they want to go to the $14 scale." He says, "All right, we will accept the $14 scale. Can you arrange through the Governor and the directors of the Highway Commission an adjustment whereby my men will be put to work?" There was a meeting in the Governor's office at which the Highway Commission and all the heads of the McClintic Marshall Company was there. The Governor argued that he thought it was unfair to bring outsiders in to be employed on this Pulaski Highway when at the time there was thousands of ironworkers in Jersey City and Hudson County idle. So we prevailed upon them and they agreed. Commissioner Gelin was president of the highway board. They agreed to employ every one of Brandle's men, they wasn't to question his card, they wasn't to question his button, that 750 men were to be employed. That was agreed on in the Governor's office. Then Commissioner Gelin wrote me a letter and told me that he had adjusted this whole affair, that these 750 men were to be employed at $14 a day, which was acceptable to the men, and when Commissioner Gelin went to see Brandle, Brandle told Commissioner Gelin to go to Hell, why he done that—that started the trouble.

Q. Well, now, as a matter of fact——

A. (Continuing.) That started the trouble with Brandle and I too because when I found out that that was the condition that was existing in his mind, that the men had an opportunity for two years' work, it was cast aside simply because he had changed his mind after he had asked me to go in and use my good office as Mayor to try to adjust these differences, that started the trouble between Brandle and myself, not between the men. A week after or probably a month after there was a murder committed.

Q. Now, Mr. Mayor, the situation, however, was that the McClintic Marshall Company came in with non-union labor, did it not?

A. Yes. They hadn't started, Counsel.

Q. They had a right to do that?

A. They hadn't started, Counsel. They completed the job with non-union labor.

Q. They were willing, as I understand, to settle with the union?

A. Yes.

Q. And employ the union people on an open shop basis?

A. Yes, every man on the job was to be a union man.

Q. That wasn't in their contract?

A. No.

Q. And they had already got their contract?

A. The contract was awarded and they hadn't even put a piece of machinery on the ground yet.

Q. And the A. F. of L. union, through its leader, Mr. Brandle, refused to accept the compromise?

A. After he had agreed with me to go down and open up negotiations, that is what disturbed me, we had the thing adjusted; these men would have been employed for two years at $14 a day instead of eating snowballs and getting nothing.

Q. Did you call that a union racketeer there?

A. Well, it was no strike, I wouldn't consider it a strike.

Q. It wasn't a strike because they were employed?

A. No, they immediately started to set up their picket lines, they started to set up their picket lines with three or four pickets here, three or four pickets there. The newspapers started to write it up and there was quite a commotion. They were endeavoring to obstruct the work of these non-union men and the police was there, I think we had two hundred police there.

Q. Yes, and they——

A. There was no disorder up to the time this man was killed.

Q. Well, wasn't there a great deal of disorder there, a mob of the workers coming to work and all that by the laboring men?

A. I wouldn't say there was any. The only disturbance we had was when this man was killed. We simply cleaned the place out. We didn't allow pickets, we didn't allow anything then.

Q. Well, as a matter of fact, the McClintic Marshall people themselves had quiet an army to protect their men at work?

A. Yes, and they started to shoot, which was causing us considerable trouble.

Q. Well, weren't two hundred Jersey City police sufficient to assure these men the right to work?

A. Well, their watchman shot two of the ironworkers, shot one through a lung, and there was quite a commotion there.

Q. Was there anybody ever apprehended for that activity there?

A. Oh, yes, the watchman was arrested.

Q. Was anybody ever convicted of the murder?

A. No, they were acquitted.

Q. Acquitted?

A. They were tried.

Q. Up to that time your relations with Mr. Brandle had been very friendly, had they not been?

A. Very.

Q. Now, do you remember having received a letter from the Hudson County Central Labor Union, A. F. of L., complaining of conditions there in relation to picketing by strikers in the last weeks of 1936?

A. What was the complaint about?

Q. Well, it was addressed, as I understand it, to you, and I am reading here from a clip from the Jersey *Journal*—I think it is the Jersey *Journal*—it is a letter addressed to you, sir, in which they say: "The attitude of the police board toward picketing by strikers in recent weeks is not consistent with the attitude you expressed as Mayor."

THE COURT: Excuse me, I won't interrupt the question this time. I will adjourn for ten minutes.

(Ten-minute recess was here taken.)

(Following a short recess.)

MR. MATTHEWS: Mr. Frazer, please, may I address the Court? I am just in receipt of a notice that my confreres have given me at recess, which says that one of the witnesses whom we subpœnaed, one O'Connell, known as Jerry and known as Congressman in this case, wrote Judge Clark as follows:

"Because the conference report on the Wage and Hour Bill, the amendments to the Walsh Healy Act and other bills of vast importance to labor and the people generally will be considered on the floor tomorrow, because of the absolute necessity that I discharge my duties as Congressman, and because of my constitutional immunity, I cannot comply with the subpœna duces tecum served upon me today to appear as a witness in behalf of Frank Hague and other defendants in the case now pending before your court. I take this occasion to inform you that my trip to Spain as well as my travel in France, England and Ireland, where my father and mother were born, was the only trip I have ever made to Europe, that the trip was made entirely at my own personal expense, and I therefore do not have in my possession any books, papers, documents or records or receipts for money received from any other source in connection with this trip. I have no books, papers, documents or records concerning any of the organizations or publications listed in the subpœna, as I have no connection whatever with any of them.

"I have never received any fees for any appearance made by me at any meetings or conferences in the United States. Occasionally some of the organiza-

tions, such as Labor's Non-Partisan League, the C. I. O. and others, have reimbursed me my actual traveling expenses. I assure you that my refusal to comply with the said subpœna is not meant as any affront to your honorable court or yourself."

I understand, your Honor, that this has been given to the press. I want to say, if your Honor please——

THE COURT: I telegraphed him acknowledging receipt of this letter and asking him what he wants done.

MR. MATTHEWS: Yes, your Honor. All right. I want to say in reply to that that while Mr. O'Connell may hide behind his constitutional immunity, he very carefully excludes certain organizations in his answer to the subpœna because he said, "I have received occasionally from the Non-Partisan League and the C. I. O. and others reimbursement for my actual traveling expenses." Now, what we want is not that kind of a statement by Mr. O'Connell, but we want his statement under oath on this stand. Now, if the Congress, as the prints tell us, is going to adjourn shortly I think it would be nice, your Honor, for your Honor to say to this man in further telegram that since this case will last at least another week he will be welcome in this domain of yours during that week, and if he doesn't want to come and wants to take advantage of his immunity, as he puts it, we will go to Washington and take his testimony and we ask you for an order for it. In other words, what O'Connell says here and what O'Connell threatens to do are two different O'Connells apparently. So we respectfully submit that since your Honor has, and rightly so, notified the Congressman that he does not have to appear tomorrow, and indeed as a real Roosevelt Democrat I hope he stays there if he can do any good to the program now under consideration of the Congress, but

when he is through I think he should be told that he is welcome here.

THE COURT: I didn't notify him of anything except asking him what he wanted done.

MR. MATTHEWS: I was informed that you had notified him to some effect, so I thought we would make public the letter and I thank your Honor for the opportunity to address the Court.

Q. Now, Mr. Mayor, wasn't it true that about the time of the McClintic Marshall trouble there was also a strike on the Medical Center in Jersey City?

A. No, we had no strike on the Medical Center; there was some little dispute about the setting up of a boiler in the engine room, that was all. I think that lasted a day.

Q. Well, now, to resume the question which I started, or to read the letter which I started to read when the recess came, I will start from the beginning:

"The attitude of the police force toward picketing by strikers in recent weeks in Jersey City is not consistent with the attitude you expressed as mayor to a committee representing the Central Labor Union of Hudson County which conferred with you several weeks ago. Notwithstanding your announcement that peaceful picketing, the right of which has been established by the courts, would not be interfered with, there have been frequent and flagrant examples of suppression of demonstrations, civil liberties and rights of assemblage by police officials on various grounds. They have ruled arbitrarily that no strikes were in progress, that the strikes were outlawed, or that the unions conducting them were not legitimate. We denounce this attitude as subterfuge, apparently designed to defeat labor in its struggle for better working conditions. Viewed from a legal standpoint, it is a usurpation of power by the police which has no basis in precedent or even in custom. Labor alone and not the police departments

are the judges of whether a strike is a strike or not. In the ranks of labor there is no misunderstanding about these vital and fundamental questions. We believe that there should be no misunderstanding of these questions where public officials are concerned. The Central Labor Union of Hudson County is determined to protect these rights fought for and gained by labor over a period of centuries. We helped to elect officials who recognize and protect these rights. If necessary, we shall protect them by legal proceedings. We helped to elect officials who assure us that any legal action requiring us to establish these rights, common throughout the length and breadth of the United States, but denied in Jersey City, will be unnecessary. Towards that end we look forward to your early reply to this letter."

MR. MATTHEWS: Who signed it?

Q. Do you remember receiving that letter?

MR. MATTHEWS: Who signed it, Mr. Frazer?

MR. FRAZER: It hasn't a signature in the account. It is from the Central Labor Union.

MR. MATTHEWS: Well, surely, somebody——

MR. FRAZER: I am asking him whether he remembers receiving such a letter.

A. Well, I ought to be allowed to answer that, counsel.

MR. MATTHEWS: All right, go ahead.

A. Have you got my reply, Counselor?

Q. I don't think so, Mayor.

MR. MATTHEWS: Maybe we have. Have we a reply to that letter?

Q. What was your reply, do you remember?

A. I don't recall. Have you got it?

Q. No, I haven't it. Do you remember receiving such a letter?

A. I don't think I replied to that letter.

Q. You did receive it?

A. I don't know, but I recall a letter similar to that. That letter was prepared by Morris Isserman, the noted Communist, who found his way into the Hudson County Federation of Labor as counsel.

Q. That was A. F. of L. though, wasn't it?

A. Yes, yes. If you will let me explain. They found themselves confronted with a half a dozen locals that promptly appeared every meeting day, every meeting night, and was running the whole works in Hudson County, because of the lack of interest of all the various other units. After they realized that the Communists and the Reds had gained control of this labor movement, which Morris Isserman was driven in there purposely, and was sent in by Mr. Ernst, under his leadership, they threw him out. He was compelled to resign. It was he who prepared that letter. That is not the expression of the labor men of Hudson County. That was prepared and tricked into by Morris Isserman, who has appeared for every Communistic movement in this state.

Q. Now those appearances, at one of those appearances before the Commission you stated, did you not—I am reading now from the testimony of Commissioner Casey in the earlier injunction suit, that you would allow peaceful picketing by the American Federation of Labor, bona fide picketing, with no busybodies interfering, and that you would not recognize the Communist unions.

A. Well, is that Commissioner Casey's statement?

Q. In effect; I have paraphrased it.

MR. MATTHEWS: No, I object. He should be confronted with the testimony.

Q. Well, here is the testimony, I merely paraphrased it. "They told me that they"—that is, it refers to the city commission—the Commissioner says that the City Commissioner told me "that they would allow peaceful picketing by the American Federation of Labor, bona fide picketing, with no busybodies interfering, and told them" the Com-

mission, "that they would not recognize the Communist unions."

"Who said this, Commissioner?

"THE WITNESS: It was said by Mayor Hague."

That is the reason that I paraphrased it, just to save the time.

A. Do you recall who appeared before us on that occasion?

Q. I don't think that appears in the testimony.

MR. ERNST: Yes, it does.

MR. FRAZER: Pages 396 and 7.

Q. The full testimony shows this. This was an examination of Commissioner Casey——

MR. HERSHENSTEIN: Was this taken in the case before Judge Clark?

MR. FRAZER: In the case before Judge Clark.

Q. Examination of Director Casey by Mr. Glavin of the Jersey City Law Department. Starting here, Commissioner Casey's examination, he says:

"With the Seamen's we didn't allow them to picket.

"Why not?

"It wasn't a bona fide union. It wasn't a bona fide strike.

"Was there any other reason?

"That's all.

"And you have had trouble with this said union, the Furniture Workers Union, before, haven't you?

"We did.

"And the same people were involved in it, Mr. Perlow and the other men, who testified here as officials of that union?

"There were.

"Now, has the City Commission of Jersey City in any way, or has it ever in any way opposed the American Federation?

"They have not.

"To your knowledge did the American Federation of Labor appear before the City Commission of Jersey City while you were a member of that Commission—that is the only thing that I have to identify the man because I got it from Commissioner Casey's examination——

"I don't get that question," he says, and Judge Glavin repeats: "Did the representatives of the American Federation of Labor appear before the City Commission of Jersey City while you were one of the Commissioners?

"They did.

"And what was the purpose of that?

"Picketing.

"Well, what happened, what was the attitude of the Commission?"

The Court interrupted and said: "How long ago?

"MR. GLAVIN: Only recently.

"Do you know when it was, Commissioner?

"Some time in January I think was the date, I am not sure, but I was at the Commission meeting.

"Yes. What was the result, what determination did the City Commission come to?"

And then comes the part that I have read earlier. That is the best I can do by way of identification.

Do you remember that action?

A. I don't know. I don't remember it, Counsel, I don't recall. You see there is nothing shows there was any question or any discussion before the Commission. I cannot refresh my memory of some official action or some group that had presented themselves, I cannot identify that.

Q. Well, I thought from your reference to these unions who were appearing at your meetings that that would probably refresh your mind.

A. They don't appear once a year.

Q. No, at this particular time I understand you to say at all the Commission meetings there were unions coming in.

A. Oh, no.

Q. I misunderstood you.

A. They never come in.

Q. Now, you remember stating in your statement of December 27th of last year that the City Commissioners have entered into an extensive publicity campaign throughout the country under the direction of Mr. Raymond Greer, the city comptroller, inviting industries to locate here.

A. Yes, sir.

Q. And one of the inducements that you set forth in those advertisements is that Jersey City is free from labor difficulties, isn't it?

A. Yes, sir.

Q. Have any new industries located in Jersey City as a result of that advertisement?

A. The report I get from Mr. Greer, hundreds of them, that is, for a period of a couple of years, Counselor.

Q. Now, in view of those representations in your advertisements you would feel as mayor of the city that you should assure those new industries coming in freedom from labor difficulties, would you not?

A. No, we don't assure them anything. The first question that Mr. Greer, who is interviewing any one of them, he asks them where are they now located, "Have you now any labor trouble? Are you unionized? What is the character and type of your employees." He tells them that if they are having any labor disputes, if they are undesirable, he never allows them in, tells them he don't want them in there. There is one man here last week from New York in the fur business was having a strike—I see where it is settled—two weeks ago. He was a big concern, and Mr.

Greer says, "No, it is impossible for you to locate in Jersey City because you are having labor trouble and you will only invite it over here from New York and we don't want it."

Q. Didn't you have some runaway shops that came over from Brooklyn as a result of this invitation?

A. So they say, I don't remember, I don't recognize them.

Q. The Uneeda Slipper Company; do you recognize them?

A. I think that is the company has given us a lot of trouble. We try to discourage all those sweatshops, we don't allow it. I am utterly opposed to the sweatshop.

Q. The Uneeda Slipper Company is located in the Harborside Building.

A. You see that is a big building, Counselor; that has, I presume, I don't know how many hundred thousand feet of space—that was a failure, you see, it was turned over to the hands of a receiver, and then they opened it up to the various industries to come in and set aside a certain amount of space and hundreds of them got in there. It is one building. So it is difficult, it is very difficult to get in at them because they are on railroad property and we have no access other than going in around on this private railroad property to really get near the building.

Q. Well, there are officers in there all the time, aren't there, in the building patrolling it?

A. No, they are their own officers,

Q. Aren't there regular Jersey City police there?

A. No, only when we have trouble we send them in there; they have their own special police department. The Pennsylvania Railroad owns that property.

Q. I understand so.

A. And they police it.

Q. Now, the Uneeda Slipper Company is one of those in there?

A. From the paper accounts; I never had it officially brought to my notice.

Q. That is a sweatshop?

A. I don't know if it is; I would like to get it out.

Q. $6 or $8 a week for forty or forty-five hours is sweatshop.

A. They ought to be put in State's Prison for paying that salary. If I had my way I would put them in jail.

Q. Did you e er hear of the Oxford Slipper Company?

A. No.

Q. It is really the same type of concern, isn't it?

A. You see I don't get any official notice of these concerns, Counselor, only through the papers. If there is any little controversy I get more information from the papers than I do officially from my colleagues.

Q. Well, now, would you permit the efforts of organizers in the Harborside Building in those shops that come over under the invitation of——

A. Well, they haven't come over under the invitation, because in the first place if they ever made known to us that they were sweatshops—we even went down there, we sent the health department down there to try to wipe them out; we sent even Mr. Green, he contacted the heads there and told him that this element of business is undesirable to Jersey City and we wish he would discontinue it, we don't want them there.

Q. Of course, your recognize the right of the employees to organize, don't you?

A. Oh, yes, yes.

Q. And is that true of these Harborside people?

A. Well, of course, you have got to explain, counsel, what you mean by organize; do you mean organize with a big bale stick or a blackjack or an ax or something?

Q. No, that wasn't my concept.

A. Well there are two methods of organizing, some organize by using force and endeavor to destroy the life of people. Now, that is one method. Now, there is another way, a peaceful way, but they all seem to want to resort to the rough way that we don't tolerate.

Q. Now, have you any examples of those rough ways or organizing recently?

A. Plenty of it.

Q. Recently?

A. Not recently, but we have had plenty of it.

Q. Have you since November 29, 1937, had examples of rough ways of organizing?

A. 1927?

Q. 1937.

A. '37, no. But, Counselor, I would like to get this over to you: During the controversy of the sweatshops I wrote the American Federation of Labor a letter and I said to the president of the American Federation of Labor that my attention has been called to the condition that exists in various sections and that there had been charges made that sweatshops has been forcing their way into Jersey City and I asked him would he get his lawyer together with the law department and whereby we could prepare an ordinance that would wipe out sweatshops in Jersey City. Now, that is a year old. Up to date they have never complied with the request, I presume, whether or not it could be legally done I do not know, but I wanted to at least make an effort.

Q. Well, now, wouldn't one of the best ways of getting rid of sweatshops be to allow labor leaders to organize and give them protection while they were doing that?

A. But who is the leaders? Why don't they do it with the local groups, why do they come from Brooklyn and New York, why don't they let the American Federation of Labor in Jersey City do it? Nobody ever stops them from doing these things but they come over from out of town and they come over and resort to all sorts of threats and all sorts of threatening of life. Why, they even beat up a lot of men who lived in Brooklyn because they moved over here with this concern.

Q. Do you remember in your statement of December 27th that you said of the CIO first that the plan was first to enter Jersey City for the purpose of distributing literature in all of the industries here, and in the business houses; do you remember saying that?

A. Yes.

Q. Now, I think it is conceded now that that wasn't unlawful, isn't it?

A. You see, Counselor, you must understand that the example that we have witnessed in the City of New York and all the big cities, those tactics in Jersey City would spell destruction to us, so we cannot tolerate that type of mass picketing. Just because a man happens to have a place of business and hasn't unionized it they immediately form ten or fifteen or twenty delegates and start to brow beat them.

Q. Mr. Mayor, I haven't said anything about mass picketing. I am asking whether you didn't say this about the distributing.

A. I am showing just what they are going to do if I permitted this distribution of circulars. Now, their methods of coming in to organize is not peaceful. How are they going to organize without molesting and attempting to violate the law in our City?

Q. How do you know they are going to do that if you don't give them a chance?

MR. MATTHEWS: He has already testified that Carney threatened it, your Honor.

MR. FRAZER: No, they didn't; they said they read in the press, that Mr. Carney said he was coming in with two thousand strong, and the same article said Mr. Carney said he was coming in peacefully.

MR. MATTHEWS: Here is the *Newark News* with the headline saying "CIO preparing for invasion." The *Newark News* certainly wouldn't have a headline that is false, would it? You wouldn't think that was false?

MR. FRAZER: I would think it was quite possible.

MR. MATTHEWS: That's coming.

Q. You said they wouldn't allow a May day parade. They have them in New York and most of the big cities, don't they?

A. They have. They had them this last few years in New York.

Q. Have any trouble with them, do they?

A. Oh, plenty of trouble.

Q. Do they?

A. I think it is a disgrace, myself.

Q. Do you allow Labor Day parades in Jersey City?

A. Sure.

Q. You do very often?

A. Yes, I think that's great.

Q. Now, what is the difference between a May Day parade and a Labor Day parade?

A. Well, everybody in a May Day parade carries a Russian flag.

Q. It is the color of the flag?

A. Yes, and everybody in a Labor Day parade carries an American flag. There is a vast difference between the two groups.

Q. Now, you do remember that some time ago there was a situation which developed in the State of Oregon, where that state attempted to prohibit meetings of communists? Do you remember that?

A. Is that the——

Q. The so-called De Jonge case; De Jonge v. Oregon.

A. That the present governor is involved in? That was defeated——

MR. MATTHEWS: I didn't get the Mayor's question.

A. That's right.

Q. No, I don't think so.

MR. FRAZER: I asked him——.

A. (Continuing.) Is that the case that the United States Supreme Court——

Q. Yes, yes, the Oregon case; De Jonge v. Oregon.

A. Where the man——

MR. HERSHENSTEIN: Not the Griffin case?

MR. FRAZER: No.

A. (Continuing.) Where the man was sent to State's prison for being a member of the communist party?

Q. Yes.

A. (No answer.)

THE COURT: There it is, Mr. Frazer (indicating).

Q. Do you remember what Chief Justice Hughes said in that regard?

A. No.

Q. "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence"—and that's what you are trying to prevent?

A. (The witness nodded.)

Q. "—the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion to the end that the government may be responsive to the will of the people and that change, if desired, may be obtained by peaceful means. Therein lies the security of the republic, the very foundation of constitutional government."

Now, you wouldn't say Chief Justice Hughes was a Red, would you?

A. A Red?

MR. MATTHEWS: I object, if your Honor pleases.

MR. FRAZER: Well, he is speaking of civil rights.

A. Yes, but you don't go far enough.

Q. Well, I will go a little further.

A. Well, all right, no, but let us recite what led up to that. They passed an act in the legislature making it punishable for twenty years in State's Prison for any man who joins the Communist Party. Is that right?

Q. Yes.

A. Well do you wonder that Justice Hughes was disturbed over an act of that character?

Q. And prohibiting the holding of any meetings.

A. Yes, but——

Q. Of that kind.

A. But he censured that man for becoming a member of the Communist Party—they found him guilty and sentenced him to twenty years.

Q. Have you got the text there? The act there, which was under review, related to some so-called criminal syndicalism, which is defined to be "the doctrine which advocates crime, physical violence, sabotage or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution."

Now, that pretty well expresses your view, doesn't it?

A. No, no.

Q. I mean when you say riots and bloodshed and murder.

A. What's the penalty of that?

Q. Well, let's go on.

A. What are you trying to hook me up with--twenty year sentence of a man?

Q. Then there is a paragraph which defines sabotage. Then it goes on and says: "Any person who, by word of mouth or writing, advocates or teaches the doctrine of criminal syndicalism or sabotage, or who prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any books, pamphlets, paper, handbill, poster, document or written or printed matter in any form whatsoever, containing matter advocating criminal syndicalism, or sabotage, or who shall organize or help to organize, or solicit or accept any person to become a member of any society or assemblage of persons which teaches or advocates the doctrine of criminal syndicalism, or sabotage, or any person who shall orally or by writing or by printed matter call together or who shall distribute or circulate written or printed matter calling together or who shall preside at or conduct or assist in conducting any assemblage of persons, or any organization, or any society, or any group which teaches or advocates the doctrine of criminal syndi-

calism or sabotage is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years, or by a fine of not more than $1000, or by both such imprisonment and fine."

Now,——

A. He got ten years.

Q. All right. For doing what?

A. I don't know. You had better find that out. I don't know.

Q. I thought you did.

A. No.

Q. For making a speech, was it, or advocating——

MR. MATTHEWS: Give him the section of the statute he was convicted under.

A. I am not a lawyer, I don't know. I don't follow those things.

Q. Well, I know you don't. I am not trying to confuse you there. You said some time ago that the Reds advocated those very things, didn't you?

A. Yes, sir.

Q. And that you believe that in Jersey City those rights were now suppressed?

A. Yes, you see what prompted that act, Counselor, if you will go back further, of all the bomb throwings and all the murders—not in that act; I am not talking of that act, but the conditions in that country back there—that's where the I. W. W. was born; that's where all this violence and all this disorder and murders has developed from; that's where it was all born, back in that country; and I presume the man who prepared that act occupied the same type of position you have always occupied in this part of the country, a real, true American. Now, if I was going to have an act drawn, I would go to you for that type of an act.

Q. I am recognized as a good, legislative draftsman.

A. That's all right, no, no.

Q. Now, going on with the opinion here, if this is more convenient——

A. I don't mean that to offend you.

Q. Not in the least.

A. I respect your ability and your life.

Q. "The question, if the rights of free speech," said Chief Justice Hughes, "and the peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

"We are not called upon to review the findings of the State Court as to the objectives of the Communist Party. Notwithstanding those objectives, the defendant still enjoyed his persoal right of free speech and to take part in a peaceable assembly having a lawful purpose, although called by that Party. The defendant was none the less entitled to discuss the public issues of the day and thus in a lawful manner, without incitement to violence or crime, to seek redress of alleged grievances. That was of the essence of his guaranteed personal liberty."

Now, may I ask this question: Suppose I should ask a permit at which Mr.—well, your favorites, Mr. Roger N. Baldwin and Mr. Morris Ernst, were to speak in Jersey City, open air, on the subject of collective bargaining for labor, and their right to earn a decent livelihood and to acquire security, would such a permit be granted?

A. If that application was made prior to this trouble there would have been no objection to that application.

Q. Under present conditions?

A. Under the present condition we could not trust them to believe that they were sincere in that type of talk, that they were scheduled to make. We would feel it was just a camouflage, that they were endeavoring to get in under that camouflage; because of their past record it would be impossible for us to trust them. Naturally, we would deny it, under the present conditions, Counselor. Prior to that, no. Nobody was denied that right. And let me add to it, Counselor, that Chief Justice Hughes' remarks in that Oregon case has existed in Jersey City since I have been the head of the government, for twenty-five years. His remarks exactly has been our attitude for twenty-five years. We objected to nobody. We denied nobody the right to talk.

Q. I understand that.

A. I must impress upon everybody that's interested in this case that this only started when this uprising started.

Q. Well, let me read this.

A. That was because of the condition of the people and the condition that has been brought about by these attacks and utterances that has aroused the people.

Q. "There are those who fail to read both the signs of the times and American history. They would try to refuse the worker any effective power to bargain collectively, to earn a decent livelihood, and to acquire security. It is those short-sighted ones, not labor, who threaten this country with that class dissention which in other countries has led to dictatorship and the establishment of fear and hatred as the dominant emotion in human life."

A. Who says that?

Q. President Roosevelt in his Labor Day radio address, September 7, 1936.

Now, if you were correctly quoted in the *Times* of April the first of this year, in relation to the Griffin case—when you were in Florida, I think.

A. (The witness nodded.)

Q. You say "my policy toward the invasion of business or industry by outside groups is unchanged. It must be clearly understood that the fact that the distribution of circulars and other literature is permitted must not be interpreted as permission to molest, threaten, or coerce the working people or to invade or interfere with private property."

A. (The witness nodded.)

Q. "Such conduct will be dealt with not as a violation of a city ordinance, but under the state laws prohibiting disorderly conduct and unlawful assemblage, which impose far more severe penalties than were provided by the city ordinance. My policy and that of the city administration to protect labor, business and industry, in Jersey City, against invasion or molestation remains as it always has been since I have been Mayor."

Does that mean that the decision in the Griffin case makes no difference in the attitude of the Jersey City authorities?

A. Oh, no, it makes a vast difference.

MR. MATTHEWS: His statement precludes that, if your Honor please.

A. Oh, no, it makes a vast difference.

Q. Now, you do not, as I read your statement, intend to makes charges for the violation of the ordinance, but to make charges for disorderly conduct and unlawful assemblage?

A. I was desirous, Counselor, in that statement to call to the attention of this group that I anticipated trouble from, that was endeavoring to take over these industries and business of our city, that even though Justice Hughes had rendered this decision, that was making it possible for the distribution of circulars, that they should not go too far in their efforts to attempt to embarrass or to do anything that would lead to any illegal act, in their efforts to distribute their circulars at our industries or places of

business. I wanted to let them know that we were determined that that would not be tolerated in Jersey City. While they may distribute their circulars, that they must do it in an orderly manner, and mustn't attempt to scare or browbeat any of the employees.

Q. Well, do you remember what you said in January, 1937, about the De Jonge case, as you were quoted at least as saying, in the New York *Times*, of January 6, 1937:

"There is a difficult situation here. We have not arrested Communists for holding meetings. We won't allow them to hold meetings."

Was that true?

A. Well——

MR. MATTHEWS: Are you correctly quoted, he wants to know?

A. What?

MR. MATTHEWS: Are you correctly quoted?

A. I don't think so. I can't get this. Is that Zerner?

Q. I don't know. It is the New York *Times*.

A. If it is Zerner, it is out with me.

Q. Well——

A. Because he has done nothing but misquote me ever since that man——

Q. Well, just let me give you the whole——

A. (Continuing.) —has come into the Red atmosphere.

Q. Let me give you the whole of it, Mayor. "We won't allow them to hold meetings. Any group of citizens has the right to peaceful assemblage but the Communists will not meet peacefully for peaceful purposes." That sounds like you, does it?

A. That's true.

Q. "To do that would be a violation of their code."

A. True.

Q. "Their policy is to incite disorder and encourage violence, to assail government, God and the church, to in-

ject themselves into labor disputes and breed revolution." That is true?

A. That is the real, correct interpretation of a Communist.

Q. Well, this may be Zerner but he is doing a good job.

MR. MATTHEWS: Well, apparently there he had a lapse.

A. (Continuing.) But wait till you get to the bottom and you will find a twist in it.

Q. No, I think this sounds pretty typical.

MR. MATTHEWS: Watch your step on that assurance from counsel, Mayor.

Q. "Revolution is their creed. We in Jersey City are God-loving, law-abiding, peace-deserving Americans, and there is no place in our community for Communists or the things Communists stand for." That sounds right?

A. I have been preaching that ever since I have been in public office, so that surely must be me.

Q. Now, Mr. Mayor, I want to call your attention to another case. This is State v. Butterworth and you remember the facts in that case, there was denial of a permit in Paterson and certain persons, including your friend, Mr. Roger N. Baldwin——

MR. MATTHEWS: I object, his friend.

Q. Well, I withdraw the word. I think the Mayor understood it was facetious.

A. Paterson was a bad place for Roger, too, he got six months there.

Q. I want to call your attention, I notice in a number of your statements that you say Mr. Roger N. Baldwin, noted Communist, was given six months in prison for his actions in Paterson but you have never said that the Court of Appeals——

A. Reversed it.

Q. —reversed it.

A. No.

Q. Was that a mere oversight?

A. Let him say it; he got the six months nevertheless.

Q. He got the six months but he got it unlawfully.

A. He deserved it. No, it wasn't unlawful, because there was a technical error, and the Court of Appeals ruled that it was a technical error.

Q. I want to read just a short piece from Justice Kalisch: "The right of people to meet in public places to discuss in an open and public manner all questions affecting their substantial welfare and to voice their grievances, to protest against oppression, economic or otherwise, and to petition for the amelioration of their condition and to discuss ways and means of attaining that end were rights confirmed and guaranteed them by the Magna Charta, the Petition of Rights and Bill of Rights, the mainstay of the British Constitution and the bases of both our Federal and State constitutions."

MR. MATTHEWS: I object, your Honor, that is not the essence of that reversal. That is just the Judge in a little patriotic aside in his opinion.

A. If you will go over the Gummere opinion you will find Sam Kalisch and Jim Minturn, they voted, they opposed it, too; they were classified in that court as being just a little bit over the line, too liberal.

Q. The reversal, however, was unanimous including Chancellor Walker, Justices Trenchard, Parker, Minturn, Kalisch, Katzenbach, Campbell, the present Chancellor.

A. Pretty good court.

Q. Yes. Now, we get to the lay judges, Van Buskirk——

MR. MATTHEWS: He is dead.

Q. (Continuing.) —Case, Hetfield and Dear.

A. Wonderful.

Q. I mean you couldn't kick about those.

A. No, but you don't say that the Communist Party contributed $25,000 to that affair in Paterson led by Nor-

man Thomas, not Norman Thomas, Roger Baldwin; Roger was well paid for his trouble.

Q. But the Court of Errors and Appeals did hold that Mr. Baldwin had a right to speak in Paterson.

MR. MATTHEWS: I object.

A. It wasn't to speak, it was a parade.

MR. MATTHEWS: Just a minute, Mr. Mayor. That opinion should be read to the Court, why it was reversed. The Court of Errors and Appeals just recited, as every judge will in an opinion, what are the fundamental rights of a citizen, but Mr. Baldwin did not slip from the noose on that account.

Q. Mr. Baldwin was convicted of unlawful assembly, wasn't he, in that case that you refer to?

A. I think it was. He was out there leading the troops, he done a pretty fair job, probably ten million dollars' worth of damage.

Q. They had two thousand people there, something like that.

A. Oh, that strike took place for six or seven months. Roger was very prominent out there, same way in Jersey City if we would allow him.

Q. Well, now, do you think on the occasion of November 29, 1937, that the action of those men who were arrested for unlawful assemblage was of such character as to reasonably create in the minds of firm and courageous persons a well-founded fear of threatening danger to the public peace, with all your police out there and forty to two hundred persons?

A. Of course, you must understand, Counselor, that declaration by the head of that union, Regional Director Carney, he had stated that they were to invade our city by three thousand strong; naturally the police was disturbed and anticipated trouble, and of course when they confront those men they notified them that this ordinance was on

the statute books and that it was in violation of the law and that they must understand now that their assemblage here is unlawful, they are on an unlawful purpose, that's the statute, and they said, "We can proceed against you for an unlawful assemblage, we now inform you that you are about to commit and violate a law. Do you still insist that you are going to violate the law?" They says, "We don't give a damn about any law, we are going to do it." Now, I think that going before a proper jury that type of testimony and that type of evidence I doubt whether or not that five or six men that has been held, they would have a hot time getting out.

MR. MATTHEWS: Or before a judge.

A. (Continuing.) Because they came there for the sole purpose of violating a law; they violated the law of illegal assemblage. They came there after being instructed by a deputy chief of police that "You are now here assembled in violation of law. You are about to violate a law; if there is any disorder, if there is any violence, you are going to be held responsible for it. You are the men is going to be responsible for this violence." They were careful on warning them, confronted them with everything appertaining to the law, and with their eyes open they says, "Law or no law we are going to follow Carney's orders." Now, I think that is a serious violation.

Q. Wasn't the attitude in Paterson much more threatening than the attitude in Jersey City on the 29th of November?

A. Well, the attitude in Paterson, the mob apparently got way out of control, and Roger Baldwin was leading a lawless mob, a mob that apparently were willing to do anything to gain their point. Now, why should he go out there and——

Q. I don't know why.

A. But he appeared there.

Q. Our Court of Errors and Appeals said he had a right to.

MR. MATTHEWS: I object, your Honor please, that is not that decision, Mayor.

A. Oh, no.

MR. MATTHEWS: That is not the decision.

A. Oh, no, he did not have a right to.

MR. FRAZER: What is your interpretation of the decision?

MR. MATTHEWS: Are you asking me, Dean?

MR. FRAZER: Yes.

MR. MATTHEWS: I will give it to you in law school, that's where you should have learned it.

MR. FRAZER: Thank you.

MR. MATTHEWS: Welcome.

THE COURT: Ten-thirty in the morning.

(At this point an adjournment was taken to Wednesday, June 15, 1938, at 10:30 A. M.)

Wednesday, June 15, 1938.

Case continued.

Appearances as before.

THE COURT: Are you ready, Mr. Matthews:

MR. MATTHEWS: Yes, your Honor.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Mr. Mayor, when these first applications in December, 1937, were made for permits, about that time, on Decem-

ber 20, 1937, Mr. Hamill wrote a letter to Mr. William J. Carney. Were you cognizant of that fact? I will show you the letter.

A. Yes, I recall that.

Q. That was written with your knowledge?

A. Yes, we had a conference.

Q. And I answered it on December 23d.

A. (No answer.)

MR. FRAZER: Have you that letter, Mr. Matthews?

MR. MATTHEWS: I don't know, Spaulding. Have we that letter?

MR. FRAZER: Or shall I use the copy?

MR. HAMILL: What letter is that?

MR. MATTHEWS: The answer of Mr. Frazer on December 23d.

MR. FRAZER: I have a copy here, if you are willing to have that used.

MR. MATTHEWS: Of course, I have never seen it.

MR. HAMILL: Was that attached to the bill of complaint?

MR. FRAZER: No, that was not attached. I have here a copy.

MR. MATTHEWS: That's all right; the copy may be used.

MR. HAMILL: Then you have my answer to you?

MR. FRAZER: Yes.

MR. HAMILL: On this letter.

MR. FRAZER: I have.

It doesn't make any difference whether the original is used, or the copy, does it?

MR. MATTHEWS: So long as you say it is a copy, all right.

MR. FRAZER: I have attached it to Mr. Hamill's reply to my answer.

Q. You were familiar with that whole correspondence, were you not, Mayor?

A. Yes, sir.

MR. FRAZER: I would like to offer it.

MR. MATTHEWS: May I see it, please?

MR. FRAZER: Surely.

MR. MATTHEWS: And it will take me a moment to look it through, with your Honor's permission.

MR. MATTHEWS: If your Honor please, I have no objection with this understanding that this correspondence between Mr. Hamill and Mr. Frazer seems to be two lawyers' interpretation of what the constitutional provisions are of statutes and ordinances.

THE COURT: I thought it was in evidence.

MR. FRAZER: No, sir.

MR. MATTHEWS: No, your Honor.

MR. HAMILL: My letter is in evidence but Mr. Frazer's letter in reply to mine and my second letter in reply to his have not been attached to the bill and have not been put in evidence.

THE COURT: I think they should be anyway.

MR. MATTHEWS: Yes. And I just want to call the Court's attention to the fact that in Mr. Frazer's letter he says Mr. Frazer is appreciative of Mr. Hamill's high sense of fair play in warning him of the New Jersey law concerning unlawful assembly. That part is very pleasing but I think in admitting the correspondence we do so with the understanding that it is simply the interpretation of my former dean and Mr. Hamill as to what ordinances and statutes mean. No objection.

MR. FRAZER: Well, that is your construction you are placing on it, Mr. Matthews; I am not limiting my offer to——

MR. HAMILL: For what purpose, Dean?

MR. FRAZER: —any such purpose.

MR. HAMILL: We object unless we know for what purpose the offer is made.

THE COURT: I suppose the ultimate interpretation of statutes and ordinances is for me and my superiors.

MR. MATTHEWS: There is no contretemps between us; we do not object.

(Received and marked Exhibit P-36.)

Q. I call your attention to the statement in this letter:

"I further call your attention to the law regarding unlawful assembly. It has been held in this state that where it is the common intent of the persons assembled to attain a purpose, whether lawful or unlawful, by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquility and peace of the neighborhood, have a natural tendency to inspire rational, firm and courageous persons in the neighborhood with well-grounded fear of serious breaches of the public peace, the crime of unlawful assembly is committed."

This letter was based upon newspaper articles which stated that representatives of the CIO intended to exhibit pamphlets and papers in Jersey City.

That's right, isn't it?

MR. MATTHEWS: Which letter please, Spaulding?

MR. FRAZER: Mr. Hamill's letter.

MR. MATTHEWS: Well, now, how would Mayor Hague know that?

MR. FRAZER: Because the letter says so.

MR. MATTHEWS: Well, if the letter says so, then will you confront him with the reading, so that——

MR. FRAZER: I showed him the letter. I will read the first sentence of the lett.

MR. MATTHEWS: Please, Spaulding.

Q. "The newspapers contain articles in which you are quoted as saying that you intend to distribute pamphlets and papers in Jersey City with or without the consent of the municipal authorities."

MR. MATTHEWS: That's the point I wanted; with or without the consent of the municipal authorities.

MR. FRAZER: Yes, with or without.

Q. Now, Mr. Mayor, that was the basis of this correspondence, was it not?

A. Yes, sir.

Q. Do you consider the distributing with or without the consent of the municipal authorities a basis for a charge of unlawful assembly?

MR. MATTHEWS: I object to that, if your Honor please, because Mr. Hamill has just brought to my attention the second sentence which says:

"You are further quoted in the press as saying that you intend to organize and hold a public meeting or public meetings in Jersey City with or without consent or permit from the administration."

Now that might well form the mayor's idea of what would be lawful or unlawful.

MR. FRAZER: I am asking him first whether he considers the first statement as a basis for a charge of unlawful assembly.

A. As to the distribution of pamphlets?

Q. Yes.

A. Well, of course, naturally, if they are to assemble and they are to march into Jersey City, with that idea in mind——

Q. Now, Mr. Mayor, may I interrupt you just a moment? There is nothing said about marching in. The papers say they are coming for the purpose of distributing circulars with or without the consent of the municipal authorities.

MR. MATTHEWS: But the newspapers had said that they were going to march in; that is what the mayor says.

MR. FRAZER: That is not what is stated in this letter.

MR. MATTHEWS: But he says that the newspapers contain articles. He couldn't quote the articles very handily.

MR. FRAZER: I have asked the mayor, may it please the Court, whether the basis of this letter is the fact that the newspapers are quoting that the CIO intends to distribute pamphlets in Jersey City. That is what the letter says. I am asking the mayor whether he considers that the basis of the charge of unlawful assembly.

A. Well, now——

Q. Can't you answer that yes or no, sir?

A. Well, now, wait a moment. Not yes or no.

MR. FRAZER: Might I ask for a yes or no answer?

MR. MATTHEWS: No, I object. How can he answer yes or no? It only takes one-half of the statement of the lawyer.

MR. FRAZER: I am confining my examination to that one-half for a moment; I am [not] trying to mislead the mayor in any way.

THE COURT: You may answer.

MR. MATTHEWS: I think the Mayor ought to know the question.

THE WITNESS: Well, it is a question that can't be answered yes or no.

THE COURT: You may answer it.

MR. MATTHEWS: The Court says you may answer it the way you can.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

A. Why, the distribution of circulars, Counselor, only leads up to, just as the paper stated, that they were coming in to assemble, coming in to meet, coming in to distribute pamphlets, which only would lead to disorder and which only would lead to probably the police being injected into the question to make arrests, and naturally the counsel on our advice was to inform this man that if he did carry out his plans that it would be unlawful and that he had to realize that he was violating not alone a local ordinance but a state statute.

Q. Now, will you answer my question?

MR. MATTHEWS: I think he has, your Honor please.

A. Your question is about the distribution.

Q. Whether you considered the coming in of a group, even of a group, for the purpose of distributing circulars a fair basis of a claim that the law against unlawful assembly is being violated.

MR. MATTHEWS: I object, your Honor; there is no such statement in that letter. He puts two special sentences in the first paragraph and says in the second. assuming you have been correctly quoted—now, this letter does not say that the Mayor considers distributing pamphlets, it adds "with or without a permit."

It adds, "You are further quoted as saying you intend to assemble and hold a public meeting with or without a permit."

MR. FRAZER: I call the Court's attention to the fact on November 29, 1937, a group of men came into Jersey City and distributed circulars and were arrested for unlawful assembly. I want to know whether the Mayor still considers that as a basis for a letter written on December 20th as violation of the law against unlawful assembly.

MR. MATTHEWS: That isn't what the letter says.

MR. FRAZER: I am asking his opinion.

MR. MATTHEWS: I object as irrelevant. If he is being examined on the letter he should be asked about the letter.

MR. FRAZER: He is not being examined on the letter, he is being examined as to his belief, as the Mayor of the City of Jersey City. The letter is a mere indication of what his attitude might be. I am trying to find out if that is his attitude or not.

MR. MATTHEWS: He says that since the Griffin decision in Jersey City they have not stopped them from distributing pamphlets. I understand that was March, 1938.

THE COURT: Yes.

MR. MATTHEWS: Here is a letter, December 20th, in which the corporation counsel writes to Carney and gives him the story that appears in the paper and warns him, as I take the letter, that any violation of that letter comes under two statutes or one statute and one ordinance, as I read the letter.

THE COURT: Exactly what do you want to know, Dean Frazer? I am a little puzzled myself.

MR. FRAZER: I want to call the Mayor's attention to the fact that certain things which the courts have held to be innocent in themselves have been made the basis of a threat by the city government of Jersey City against those who propose to exercise those rights.

MR. MATTHEWS: I object, if the Court please.

THE COURT: Such as what things?

MR. FRAZER: The distribution of circulars, the holding of public meetings.

THE COURT: Well, will you divide the two things? I understood that Jersey City admitted error in view of the Supreme Court decision.

MR. MATTHEWS: Not error, but Jersey City said that since the Supreme Court had so decided it would consider the Supreme Court had interpreted it in that fashion, and as good citizens would follow the law. The Supreme Court declared the Minimum Wage Law unconstitutional but later it said itself it was in error. Now, the error we don't want to put on Jersey City any more than on the Supreme Court.

THE COURT: Well, I use "error" in the legal sense.

MR. MATTHEWS: Yes, your Honor please.

THE COURT: Now, about unlawful assembly; will you frame that question alone.

Q. Do you consider it an unlawful assembly for persons to come into Jersey City for the purpose of distributing circulars, whether singly or in groups, and whether with or without the permission and consent of the municipal authorities?

MR. MATTHEWS: Now, if your Honor pleases, he has already answered that.

Q. That is capable of a yes or no answer.

MR. MATTHEWS: He has already answered that question by saying that it depends on the circumstances in the case. We went all over that, Spaulding.

MR. FRAZER: May I ask that counsel not interrupt and continue to prompt the witness.

MR. MATTHEWS: I am not——

THE WITNESS: I think, Counselor, that I should answer that.

MR. MATTHEWS: All right, Mayor; go ahead.

A. The Counselor's question is, referring to this letter that was forwarded to Mr. Carney by the corporation counsel, after conferences of the Director of Public Safety and myself and several other members of the law department and members of the City Commission. The Counselor does not lay the groundwork and show which led up to the appearances of this group of people coming into Jersey City. This was prior—this was after, rather—the statement of Mr. Carney that he was going to invade Jersey City three thousand strong.

Q. That statement, according to you, was made some month before?

A. No, no, no; no.

Q. This is December 30th.

A. Well, when was the statement of Mr. Carney?

Q. Somewhere about November 25, 23.

MR. MATTHEWS: 23d.

Q. The statement which you claim to have been made, which I don't admit having been made, but the one which you referred to as having appeared in the press came before November 29th.

A. You will find that that letter, Counselor, was the result of a statement of Mr. Carney, returning back to Jersey City. Now, naturally, I don't think it is a serious violation, as I stated earlier in my testimony, for a man to be

apprehended or stopped for the distribution of circulars. Certainly not. That's a minor—I don't consider a group of men attempting to talk on a public street without a permit as a serious breach of the law. That's a minor, but it depends on circumstances surrounding both of those violations. If that's a threat to the government, to the very foundation of government, then it is serious. If it is a minor distribution or violation, it is not serious.

Q. The intent of that letter, Mr. Mayor, which was written after a conference of the Commission, was to threaten—

A. No, no.

Q. (Continuing.) —the CIO—may I complete my question?

MR. MATTHEWS: I object, if your Honor please.

MR. FRAZER: May I complete my question, please?

Q. (Continuing.) —was to threaten the representatives of the CIO if they continued to come in.

MR. MATTHEWS: I object.

Q. (Continuing.) To hold public meetings or to distribute circulars there would be criminal or penal prosecutions of one kind or another taken against them, would there not?

A. You wouldn't consider it a threat for a duly authorized public official that's cloaked with the authority to advise the legal bodies as to their duties to notify any group that's endeavoring or about to violate a law, call their attention to the fact that they are about to violate a law, and describe just exactly what the penalties are. I don't think that's a threat. I think that's doing them a kindness.

Q. Now, I call your attention to the fact that in my reply I stated this:

> "I have every desire, however, to avoid all conflict between my clients and the police authorities of Jersey City, and I am wondering whether there is not some common ground in this field of law upon which we may meet."

MR. MATTHEWS: Now, did he see the reply? That is the next thing.

THE WITNESS: I beg your pardon?

MR. FRAZER: Do you think I am reading falsely, Mr. Matthews?

MR. MATTHEWS: No, no; I say did he see this reply. It is directed to Jim Hamill.

MR. FRAZER: He said the whole matter was the subject of conference.

MR. MATTHEWS: No, he said——

A. Of course, Counselor, you were calm, and you in the preparation of that letter—naturally you could say about all these minor, small violations, do I think this and do I think that; but you are covering up all the other approaches to the whole question. You don't start from the beginning.

Q. No, Mr. Mayor, I am not covering up anything.

A. No, no, I don't charge you with that; but I say your letter comes so far behind all this disorder and all this threat and all these newspaper headings, and streamliners, about the invasion and about the dangers of life and property and disorder.

Q. Well, now——

A. You see, your letter is written at a time when everything is apparently peaceful.

Q. Yes, it was peaceful, wasn't it?

A. At that time.

Q. Yes. And then Mr. Hamill writes a letter saying that if anybody tries to come in and distribute circulars, or to hold a public meeting, with or without permit, that there will be certain consequences of the law upon those persons. I say that's a threat; don't you think it is?

A. No, no. Is that your letter—does your letter come after Mr. Hamill's?

Q. Yes, immediately afterwards. His was on December 20th, received I presume by Mr. Carney on December 21st, and coming into my hands about the 23d.

A. Well, in fairness to the Court, you ought to show us what led up to Mr. Hamill's letter.

Q. Why, I assume that Mr. Hamill's statement in his leter shows what led up to it.

A. Well, I would like to see Mr. Carney's statement. I would like to see just what led up to all this, the necessity of a letter of that character. I don't think it is a threat.

Q. Well, Mayor, I just thought—you said just a moment ago, you gave a picture of what led up to it, a newspaper account, did you not?

A. Well,——

Q. So that you knew what that was; you know it better than I do.

A. It wasn't one statement by Mr. Carney. It was numerous statements.

Q. You say there were numerous statements?

A. Oh, yes.

Q. And as a result of that, Mr. Hamill wrote a letter in which he said that if any of these actions are done in Jersey City, the persons who commit them may consider themselves as subject to some kind of penal or criminal action; that's right, isn't it?

A. Yes.

Q. Now in reply to that I wrote a letter in which I make, as Mr. Matthews has said, a statement of my viewpoint of the law, in which I disagree with Mr. Hamill. Then I add those words:

> "I have every desire, however, to avoid all conflicts between my clients and the police authorities of Jersey City, and I am wondering whether there is not some common ground in this field of law upon which we may meet."

That was a courteous question, was it not?

A. That letter, yes; that letter would be very appropriate, Counselor, if it was prior to the declaration and the threats of Mr. Carney; but after that—now you are asking us to go to work and conceive, after all this hurrah has been

created by the threats and by the invasion of these men, and you are saying is there no peaceful grounds that we can get together on. You see, the City comes into the picture then. The people have arrived into the picture. It is the people then we are dealing with, not with the individual commissioners or the counsel. You see, the people then started to move on this question and we had something else to contend with.

Q. Well, the people hadn't started to move on the 20th of December, had they?

A. Oh, the papers had——

Q. What caused them to move?

A. The papers and Mr. Carney's statement and the conditions which had taken place in every other city that the CIO had contact.

Q. And how were those movements of the people brought to your attention in December, or prior to December the 20th?

A. Why, by public expression and by people stopping me and writing me and calling me up and contacting with the police department and contacting with everybody in general.

Q. Prior to December 20, 1937, immediately, had the people been forming into some kind of activities?

A. Oh, I don't say immediately, Counsellor. Those things don't happen immediately. Those things take some little time.

Q. Well, Mr. Mayor, were there any——

A. At the time your letter arrived—you didn't get into the case, Counselor, until at least a month after this whole controversy took place.

Q. You are now referring to November 29th?

A. Yes, December 1st.

Q. I am now asking you what was the immediate cause of the communication of Mr. Hamill of December 20th, 1937, to Mr. Carney?

A. The immediate cause was that we—we must bring Mr. Carney and everybody to a realization as to the law

governing this question that they were endeavoring to take into their own hands.

Q. Well, now——

A. And we felt that naturally we should lay groundwork. We anticipated plenty of disorder, possibly bloodshed, and the Counselor there in his wisdom said we had better notify these people of just what the law is, and what is confronting them. Now, I don't consider that a threat, Counsellor.

Q. Just what was the activity of the people immediately preceding the writing of the letter of December 20th, which made the City Commission take action, through its corporation counsel, in addressing this letter to Mr. Carney?

A. Well, will you tell me the time that elapsed between Mr. Carney's invasion of Jersey City and this letter that you are discussing?

Q. If by the "invasion" you mean the affairs of November 29th——

A. I mean the beginning of it.

Q. That would be three weeks.

A. Well, there is justification, Counsellor, ample opportunity for the people to become acquainted with what's going on.

Q. Well, weren't the people satisfied for the time being by the arrests of November 29th?

A. Counselor, you probably overlook the fact that the papers of this country was carrying spreadheads all over the front pages about the disorder and about the violence in all these other cities. Now, the name CIO was a name that was considered a serious question in any city, and when they insisted that they were coming into Jersey City law or no law, they anticipated that the same conditions was going to develop in Jersey City that developed in Detroit, Michigan, Ohio, Pennsylvania and Illinois.

Q. But they didn't say they were coming in law or no law, did they, Mayor?

A. Yes, they did.

Q. They said they were coming in with or without a permit.

A. No, law or no law, Mr. Carney used the word.

Q. Not on December 20th.

A. No, I am talking of the beginning.

Q. I am speaking of the circumstances around December 20th. November 29th was a past episode; men had been apprehended and punished. I suppose after that there was quiet in the bosom of the citizens of Jersey City, was there not?

A. No. I say no because—no, there was quite a barrage from the Civil Liberties and Garfield Hays and everybody prior to you entering into this picture. Now, Counselor, that gave the people ample opportunity to make up their minds as to what the condition was surrounding these threats, as I would call it, from Carney, not a threat from Mr. Hamill.

Q. Well, now, going on with my letter I said I had every desire for a peaceful settlement and said, "I have advised the distribution of a pamphlet entitled 'The Wagner Labor Relations Act and Its Interpretation by the United States Supreme Court,' which will merely set forth the principal provisions of the statute and excerpts from the United States Court's opinion."

Do you think that that is a proper circular to be distributed among the people of Jersey City?

A. Your letter and that circular would have been very appropriate, Counselor, and if they had arrived prior to Mr. Carney making these declarations and threatening all sorts of violence and invasion, yes, that would have been appropriate, that and your letter would have been ideal at that time, but it had not arrived until three weeks after.

Q. Now, I recall that in certain instances the ordinance against distribution of pamphlets had been stated to be a perfectly legitimate police power ordinance because it prevented the littering of streets, that's right?

A. Yes.

Q. So I added this to show what our good intentions were: "Should you in your interpretation of the Jersey City ordinance deem it necessary, each distributor in Jersey City will be assigned two persons or a larger number if you prefer, whose task will be to pick up any of these pamphlets which may be dropped by the recipients on the sidewalks or streets."

That was a fair offer, too, wasn't it?

A. Well, no, I would say no because of the fact that the Supreme Court had sustained this ordinance and we had to abide by that ordinance.

Q. That is the littering ordinance?

A. Yes.

THE COURT: Did we get that decision that I asked for yesterday?

A. (Continuing.) You must remember, Counselor, that ordinance had been on our books for a long while.

MR. FRAZER: Just excuse me a minute, Mr. Mayor.

12 Miscellaneous, page 12.

THE COURT: Oh, is it here? Oh, I beg your pardon, I didn't know we had that.

Will you take this, Mrs. Bergen, so that I can have it in the record. Nelson v. McGovern, 12 N. J. Miscellaneous Reports, page 12. "Prosecutor had called at a private residence and delivered an unsolicited advertising circular to the occupants," quoting from the opinion.

Is there a question?

MR. FRAZER: No, I thought your Honor had not finished.

THE COURT: No, that's all. I just wanted to put it on the record so I would have it.

Q. Wasn't the offer to accompany each distributor with persons who would pick up any papers which were dropped a fair offer to prevent the littering of the streets?

A. Well, we had no——

Q. You can answer that. Was it a fair offer? Can't you, Mr. Mayor, without making an explanation?

A. Well, Counselor, Judge Clark had committed himself on this ordinance at the Garfield Hays hearing before him. He questioned Judge Glavin who said to Judge Clark that that ordinance does not permit the authorities even to permit anybody to violate this ordinance; therefore that it was a prohibition against the distribution of circulars in any form. Now, we felt that we have no right or no power to enter into an agreement with you, Counselor, to violate this because it was so binding and the courts had held it was so binding.

Q. As a littering ordinance.

A. Well, as everything, as we interpreted it, the distribution of circulars in any form.

Q. So that your position was, no matter what efforts were made on the part of the distributor, to prevent littering of the streets you would not have any power to permit a distribution?

A. No, we had no power whatsoever.

Q. But you have on many occasions permitted circulars to be delivered in Jersey City?

A. No, not with permission.

Q. Not with permission, but you have knowingly allowed circulars to be distributed?

A. No, I won't agree to that, Counselor. They distributed them, took a chance and got away with it; we didn't grant them permission.

Q. Weren't those patriotic rally cards distributed on the streets of Jersey City, Exhibit P-9?

MR. MATTHEWS: I think the testimony of the Mayor already on that is that they were.

A. Well, they may have been distributed, I don't know, Counselor.

Q. You don't know?

A. My understanding of that was they were put in the mail.

Q. These?

A. I think so, everything was mailed.

Q. Well, at that time for those rallies there were a series of postal cards gotten out, weren't there? That was mailed?

A. They wasn't distributed from the street, they were distributed to each address. They don't distribute those things on the street. We have so many of those types of cards during election time, during election period. Now, the man in charge of this district, he doesn't deliver those on the street, he goes from door to door and delivers them to the people by their name. That isn't prohibited any more than the United States mail is prohibited from being distributed personally.

Q. What is the Jersey City Police Department Safety League?

A. That is a group under Inspector Ciecuch.

Q. What do they do?

A. Oh, they do plenty; they assemble at various assemblies, for instance, you take the Henry Snyder Junior High, I have seen five thousand people, automobile drivers, present at one of their entertainments and lectures as to the safety of driving their cars, and as to instructions by moving pictures of accidents and things of that kind. I think they are very valuable to the community.

Q. I show you——

A. For safety.

Q. I show you a green card of the Jersey City Police Department Safety League, Unit No. 5, Snyder High School, and ask you whether those cards were not delivered on the street by police officers.

MR. MATTHEWS: Your Honor please——

A. No, they were never delivered.

MR. MATTHEWS: Casey testified they were delivered to the mail boxes.

A. Counselor, we don't let anybody be present at those safety meetings but automobile drivers. They couldn't deliver them on the streets, they are delivered to the owners of the cars and drivers who possess drivers' licenses, who we have a list of; policemen go from door to door in a great many instances of that to the name and who the driver is. What good would it be to invite the general public to those gatherings? We want the drivers.

Q. Very well, you have answered it. Now, in this letter you also, or Mr. Hamill also calls attention to their statement that they will come in for public meetings, and in my letter I made this statement: "The reason an open air meeting is contemplated is that as you well know, the owners of meeting halls in Jersey City have been so intimidated that they fear going against Mayor Hague's wishes will mean they will have to leave Jersey City. All I ask is that you face these facts realistically. If you, as his legal adviser in municipal affairs, will inform the Mayor that it is not lawful for him to intimidate owners of halls in Jersey City so that they will not hereafter refuse offers to pay for the use of their premises good currency which, but for the Mayor, they would be glad to earn, my clients will be happy to abandon their plan for an open air meeting and will hold all of their meetings indoors." Was that a fair offer of compromise?

MR. MATTHEWS: I object, if your Honor please.

Q. I ask for an answer.

MR. MATTHEWS: I object, if your Honor please. The testimony in this case and from the Mayor is that there was no intimidation and that letter was enough to incense any department and to show the Machiavellian first of those behind Spaulding, his clients, so that he didn't disagree with them when he wrote that letter but made baseless charges there. I don't think he wanted to make them himself, that is what his clients informed him. Now, that is baseless because the Mayor has shown that no hall owner was intimidated.

THE COURT: Leave that part out.

MR. MATTHEWS: Despite their attempt to lug it in by hearsay evidence, there is not a scintilla of evidence in this case that a single hall owner was ever intimidated.

THE COURT: Leave out the word "intimidated" and ask the question.

Q. Was it a fair offer of compromise that if halls would be provided upon proper payment for their use, the CIO would abandon all open air meetings and would hold all of their meetings in halls, was that a fair offer?

A. Yes, that was a fair offer, as long as you eliminate that "intimidation," as the Judge said. The offer is fair, Counselor, we won't dispute that.

Q. We will say not intimidation but as a condition to the offer that the hall owner be assured that he may rent with the permission of the Jersey City authorities to my clients.

MR. MATTHEWS: I object to that question, that isn't the letter at all.

MR. FRAZER: I didn't say it was the letter, I am speaking of the offer.

MR. MATTHEWS: That question is irrelevant.

THE COURT: I think you should say "with the approval" rather than what word you did use. Substitute "approval."

MR. MATTHEWS: Your Honor, they have been unable to prove this bluff about the hall owners.

THE COURT: I am not going into that.

MR. MATTHEWS: They want to put it on the record in this fashion.

THE COURT: "Approval." I will allow the question with that.

MR. MATTHEWS: Your Honor allows an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. An offer to hold meetings indoors and to abandon outdoor meetings if halls might be rented with the approval of the city authorities is a fair offer, isn't it?

A. Very fair. Might I say, Counselor, that has been the attitude of the governing body ever since I have been associated with the governing body until this trouble started.

Q. Well, now, the tone of my letter was courteous, wasn't it?

A. Very, very well prepared. You must have given some considerable thought and preparation to it.

Q. Yes, I prepared it carefully, but don't you think it was entitled to a less summary reply than Mr. Hamill gave?

MR. MATTHEWS: I object. He cannot interpret Jimmy Hamill's interpretation. The mayor may have considered it a whole lot but Jimmy may have considered it bunk.

MR. FRAZER: I didn't ask for his opinion as to Mr. Hamill's letter; I asked whether in the mayor's opinion my letter wasn't entitled to a less summary reply than Mr. Hamill vouchsafed.

MR. MATTHEWS: I object to this attempted Damon and Pythias attitude.

THE COURT: I don't think you should characterize it.

MR. MATTHEWS: Well, your Honor, what the mayor thinks——

MR. FRAZER: The Court has ruled in your favor.

MR. MATTHEWS: Sorry. It is again my defective hearing; my age does creep over my gray hair.

MR. FRAZER: And I do not ask any exception to the Court's ruling.

MR. MATTHEWS: Thank you.

Q. Mr. Hamill says in his letter in reply to my answer:

"Your letter, which is lengthy and discursive, contains a number of comments, suggestions, complaints and criticisms. These I am not answering now for the reason that no practical result would follow and no practical advantage could be gained by either of us from discussing them at this time."

A. That's just a little fencing, I think.
Q. That is just a little fencing?

MR. HAMILL: Oh, I object, if your Honor please.

MR. FRAZER: May I——

MR. HAMILL: Just a minute. I have an objection.

MR. FRAZER: The mayor said it was just a little fencing.

MR. HAMILL: I object to anybody interpreting what I mean. If I am put on the stand, I will tell Mr. Frazer what I think of his letter and what I think of mine, and I will tell him many things; I will tell him plenty before I get finished, and I will be here to receive his call to take the stand.

THE COURT: The mayor just said that he interpreted your letter as a little fencing.

MR. HAMILL: I can't interprete his letter because that is Carney's letter, written through the hand of Frazer.

MR. FRAZER: May I ask the Court——

MR. HAMILL: I wouldn't consider Frazer guilty of the sloppy composition of that screed that was thrown

on my desk. I didn't think it worthy of an answer and only out of courtesy for an old gentleman whose heart was good and his mind misled, I sat down and wrote him a short, courteous reply.

MR. FRAZER: Now, may I ask my question? I haven't come to a question yet.

THE COURT: I think the mayor answered it, Dean Frazer, didn't he?

MR. FRAZER: No, I started to ask a new one.

THE COURT: Oh.

MR. FRAZER: When Mr. Hamill so kindly volunteered his little touch of humor in the case.

MR. HAMILL: I will answer under subpœna just as well.

MR. FRAZER: Perhaps I better start it over again, if I may. I started a new question.

Q. Mr. Hamill said in his letter: "Your letter, which is lengthy and discursive, contains a number of comments, suggestions, complaints and criticisms. These I am not answering now for the reason that no practical result would follow and no practical advantage could be gained by either of us from discussing them at this time."

Did you notice that it said, "At this time," Mr. Mayor? Has there been any offer on the part of the Jersey City authorities to discuss them at any time since then?

MR. HAMILL: No, because there has been a charge of bad faith on the part of his client.

MR. FRAZER: Now, I objected to counsel interrupting my questions.

THE COURT: Yes, go ahead.

MR. HAMILL: You have no right—oh, wait a moment. Thank you for the smile. But I am afraid that it masks enmity.

MR. FRAZER: Oh, no, no.

MR. HAMILL: He is asking this witness to tell why I wrote a certain sentence. Now, does he know?

THE COURT: No, he has asked another question now.

MR. HAMILL: I don't usually divulge my reasons indirectly; I divulge them directly, to my correspondent.

MR. FRAZER: I don't know whether the mayor answered my question or not.

THE COURT: I think he was just about to answer it.

THE WITNESS: Yes.

Q. Have there been any efforts——

A. No.

Q. No. Mr. Mayor, what seems like weeks ago, I submitted to your counsel a list of Jersey City plants which at the time I identified with my initials S. F. and asked whether those plants were actual plants in Jersey City. Mr. Hamill returned them to me with two of the plants checkmarked —the Colonial Shoe Corporation and the Davis Baking Powder Company—which, as I recall it, he stated had been plants in Jersey City but had subsequently been removed.

A. (The witness nodded.)

Q. And that the rest of them were existing industries in Jersey City. I ask you whether in looking over that list, if you will be so kind as to do so, you can state any plants which to your knowledge are engaged in business which involves the shipments of goods outside of New Jersey?

MR. HERSHENSTEIN: If he knows.

MR. FRAZER: Of course, if he knows.

I am again confronted with the Donnybrook Fair of objections from three people.

MR. MATTHEWS: Well, Charlie could hardly be a member of Donnybrook Fair. Hamill and I are Irish.

You would have to say it is not a Donnybrook Fair, I think.

MR. FRAZER: The Irish claim all, don't they?

MR. MATTHEWS: Well, we claim you too.

MR. FRAZER: Thank you.

A. I would say, Counsel, there is a quite a few——
Q. I mean we could say the Colgate Company, for one?
A. Yes; and the American Can.
Q. The American Can?
A. Yes.

MR. MATTHEWS: What is the purpose of these questions, may I ask, if your Honor please?

A. (Continuing.) I would say all those concerns do have interstate business. I would say that the majority of them there do have.

MR. FRAZER: I would like to offer this. Mr. Hamill had earlier suggested it be made a matter of stipulation.

MR. HAMILL: Oh, yes; all except——

MR. FRAZER: Yes, I have called attention to those check-marked.

MR. HAMILL: These are some of the industries that we are protecting.

THE WITNESS: Yes.

MR. HAMILL: Yes, except the two that I pointed out to Mr. Frazer.

THE CLERK: Any objection?

MR. HAMILL: No objection.

(Marked Exhibit P-37.)

Q. Now in addition to the ordinance which Mr. Hamill referred to in his letter of December 20th, which we have

been considering, you have in Jersey City also a placard, so-called placard, anti-placard ordinance, have you not?

A. What is that?

Q. Well, I will show you what I am sure is a true copy of it; an ordinance to prohibit the placing, carrying or exhibiting on sidewalks or roadways of show boards, placards, banners or signs for the purpose of displaying them, and prescribing the penalties for the violation thereof.

A. (The witness nodded.)

Q. That seems to have been adopted on May 18, 1937; is that right?

A. That is right; after our election.

Q. Now, would you mind looking at that and telling me whether that is a true copy?

A. I am familiar with it, Counselor.

Q. Well, I just wanted to be sure whether what I am handing you is a true copy, because I think it will save trouble.

A. Yes, that is it.

Q. Thank you very much.

MR. MATTHEWS: Is that the ordinance that was upheld in the 5th Avenue Coach case, Mr. Frazer?

MR. FRAZER: I don't know. I was just wondering whether you had any objection to my introducing the ordinance?

MR. MATTHEWS: Well, I haven't seen it at all, Spaulding.

MR. FRAZER: Very well. Satisfy your curiosity, Mr. Matthews.

MR. MATTHEWS: Well, shall we take this off from the bottom, "taken off June 13th from the record book in the office of the city clerk. Ashley Carrick."

MR. FRAZER: Yes. Usually when I turn something down——

MR. MATTHEWS: You don't expect me to see it.

MR. FRAZER: No, if I do turn it down, I do not mean to include it in the offer. Otherwise I would not turn it down. I didn't want to be asleep at the switch.

MR. MATTHEWS: No, don't tell me that you would be asleep at the switch. You never have.

MR. FRAZER: Mr. Ashley Carrick, who comes from a very fine family, as you know, took that off the——

MR. MATTHEWS: The boy that got the black eye, was he?

MR. FRAZER: Exactly; the boy who was——

MR. MATTHEWS: Deported?

MR. FRAZER: Deported.

MR. MATTHEWS: And the boy who got on the ferry.

MR. FRAZER: Exactly, the same man.

MR. MATTHEWS: Well, let's take Ash out of it. Shall I tear it?

MR. FRAZER: Take it out.

MR. MATTHEWS: Yes. I hope I don't tear the ordinance.

MR. FRAZER: Oh, be careful, will you? Be careful.

(The clerk removed the portion indicated.)

MR. FRAZER: Now, I would like to offer that, Mr. Matthews.

MR. MATTHEWS: I just want to examine it after I take off Mr. Carrick's name, please.

(Mr. Matthews conferred with Mr. Hershenstein.)

MR. MATTHEWS: I understand from Mr. Hershenstein that there is no objection to that, and I have no objection, as the counsel conducting the examination.

(Received in evidence and marked Exhibit P-38.)

Q. Mr. Mayor, do you remember that in 1936, during the legislative session, there was pending a bill in the Legislature of New Jersey which is popularly referred to as the anti-injunction bill?

A. Yes, sir.

Q. Do you remember that during the pendency of that bill, or do you remember that that bill had the support of labor, generally?

A. Yes, sir.

Q. Do you remember that during the pendency of that bill you addressed, upon the letterhead of the National Democratic Committee, Frank Hague, Jersey City, New Jersey, a letter to the Honorable Senator from Hudson, Senator Stout?

A. Yes, sir.

Q. In reference to that bill?

A. I do.

MR. MATTHEWS: I object, if your Honor please. what relevancy can that have to this issue?

THE COURT: I don't know. I haven't seen the letter. May I see the letter?

MR. MATTHEWS: Well, what relevancy can the anti-injunction bill have to this issue?

(Document handed to the Court.)

MR. MATTHEWS: Chancellor Campbell opposed it, if I remember correctly.

THE WITNESS: I think a free discussion of that anti-injunction bill would be all right.

MR. MATTHEWS: That's fine, Mayor. Go to town.

Q. All right. Now, in that letter you said as follows, and if I am wrong you will remember it in substance, won't you?

A. Yes.

Q. "Dear Senator: The recent controversy over the provisions and effect of assembly bill 108 caused me to have the bill examined for the purpose of examining what position I thought Democratic members of the Senate should take concerning the bill. The analysis which I have caused to be made convinces me that its passage would not be in the best interest of this state. It is aimed directly at our Court of Chancery. It seeks to strip that court of the wide power possessed by it since the organization of the court itself. Such a radical step could have but one effect upon industry. Its enactment would not alone discourage new industries from coming here but will surely drive out hundreds of others now located in New Jersey, with consequent injury to thousands of our citizens, many of them members of labor organizations, and undoubtedly cause such people to lose their employment. My earnest conviction is that you will be serving not only the state but your party as well by voting against this measure. I do not think our party should accept responsibility for putting such a measure upon the statute books. I shall appreciate it if you will convey my views to your Democratic associates in the Senate. Yours respectfully, Frank Hague."

That's an accurate copy of the letter, is it not?

A. Yes, sir.

Q. And you were writing that letter as the leader of the Democratic Party in New Jersey?

A. Yes, sir.

Q. Now do you consider that that letter was something in favor of labor?

A. No, that letter, as I thought, was doing both labor and industry a great service.

Q. It was quite contrary to the desires of labor at that time, was it not?

A. No, Counselor. I am familiar with the conditions in other states, particularly the State of New York, which——

Q. Mr. Mayor, that is not responsive to my question. A. Oh, well, now——

MR. HERSHENSTEIN: He is trying to explain, Mr. Frazer.

MR. FRAZER: No, just a moment. I asked whether it was not quite contrary to the desires of labor in 1936. Now that can be responded to without telling me what labor is doing in New York State.

MR. MATTHEWS: Oh, the labor in New York would certainly be compelling on Mr. Hague as the leader of his party to give advice to New Jersey.

MR. FRAZER: It is a very simple question.

MR. MATTHEWS: Ab actu ad posse valet illatio.

THE COURT: I don't quite know what you mean by labor.

MR. FRAZER: Organized labor expressed through its unions.

THE COURT: In New Jersey?

MR. FRAZER: In New Jersey.

MR. MATTHEWS: Now, your Honor, he has made the question different. He said labor——

MR. FRAZER: Well, I have been referring to labor in this cause, unless otherwise and in more general terms, as labor in New Jersey. I think that is understood.

MR. MATTHEWS: Labor in New Jersey wasn't alone interested in his anti-injunction. The conditions in other states had to be considered.

THE COURT: Will you excuse me a minute?

MR. FRAZER: Not for New Jersey legislation.

MR. MATTHEWS: Oh, yes, sure, Spaulding.

(At this point a short recess was taken.)

Q. Mr. Mayor, before the recess we were discussing the anti-injunction bill of 1936. That bill is substantially in principle what is known as the Norris-LaGuardia bill that was enacted by Congress in 1934, isn't it?

A. I haven't examined that bill.

Q. You are not familiar with it?

THE COURT: You mean substantially in language.

MR. MATTHEWS: He says he doesn't know.

A. It is similar to it from what I can understand.

Q. Mr. Mayor, I understood you to say that before the episode leading up to the affair of November 29, 1937, it had been the practice in Jersey City not to deny permits for open air meetings.

A. Well, now, just a minute, your Honor. I don't think it is fair for the counsel to leave this injunction bill stand in such a manner as it is now without me being permitted to explain.

MR. FRAZER: Well, you will have that opportunity.

THE COURT: Your own counsel will have to do it unless he wants to let you.

THE WITNESS: Because I would like to be heard on that injunction bill.

THE COURT: Your own counsel can ask you any questions he wants. Dean Frazer could if he wanted to.

THE WITNESS: I think it is unfair, Counsel, for you to abruptly drop that in such a manner.

Q. Well, I appreciate that you have a right to have your examination re-directed.

A. But you simply take, Counselor—I don't want to interrupt you—labor was in favor of the bill, you were against it, and stop and leave me hanging there, I don't like that.

Q. That is the fate of many a witness.

A. Oh, I understand; I just want you to understand it.

MR. MATTHEWS: I have a big arrow pointed at it in my notes, Mayor, don't worry.

MR. HERSHENSTEIN: No, but the newspapers get the report before it has a chance to be explained.

MR. FRAZER: I don't understand we are trying this case for the newspapers.

MR. MATTHEWS: We are not.

A. You are not trying it for me, I promise you that, Counselor.

Q. May I repeat my question and ask whether I am right in saying that the practice in Jersey City prior to the affairs leading up to November 29, 1937, was not to deny permits for open air meetings, that's right?

A. We never denied them, no.

Q. But I am informed, I don't know how truthfully, that there was a movement for what was known as the Labor Court Reform, which applied for a permit in October of 1937, which was denied; do you know about that?

A. No—Labor Court, what is that?

Q. I don't know; I thought maybe you knew.

A. I don't.

Q. There was some agitation, I think, for a special court to hear labor matters.

A. I am not familiar with it.

Q. And there was an application made by a group interested in it for a public meeting which was denied, is that true?

A. I don't know, Counselor, I don't know who the Labor Court is. They certainly must be bad if they were denied a permit.

Q. You said that Mr. John L. Lewis was not a Red and that he was forced into the leadership of CIO, as I understand it, on account of the actions of Mr. Brophy. Do I quote you correctly?

A. Well, general actions of Brophy and Mr. Ernest and everybody else.

Q. Now, considering his character as a substantial Democrat——

MR. MATTHEWS: I object to that, if your Honor please.

THE COURT: Whose character?

MR. FRAZER: Mr. Lewis.

MR. MATTHEWS: He has no right to characterize him as such.

MR. FRAZER: I understood I was substantially saying what the Mayor had said; if I am wrong——

MR. MATTHEWS: He said nothing about his being a substantial Democrat unless you mean his avoirdupois.

MR. MATTHEWS: I withdraw those words.

Q. You know who I refer to when I say Mr. John L. Lewis?

A. I never refer to him as a Democrat.

Q. Suppose he were to make an application for an open air meeting in Jersey City on behalf of the CIO, would the authorities permit it?

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: You may answer.

A. It depends, Counselor, entirely upon the pulse of the people as to how they treat the application, which would be made known through the public press and the conditions that prevail in Jersey City at the present time and at the time the O'Connell and Bernard affair took place, no, he could not be allowed to come there because it would be endangering his life to permit him to come there.

Q. So that under present conditions your answer would be no?

A. No. It would be impossible because he represents the very group that we are opposing.

Q. Did you ever hear of a group known as the National Rededicationists?

MR. MATTHEWS: The what?

MR. FRAZER: The National Rededicationists.

MR. MATTHEWS: Good-night.

MR. FRAZER: You didn't, Mr. Matthews.

A. I suppose that is one of the groups that the communists is clever enough to put a beautiful title on and a beautiful color. I don't know who they are.

Q. Well, one of them is Norman Thomas.

A. Well, that lets them out right there.

Q. Well, my information is, Mr. Mayor, that other members of the committee are Mr. Herbert Hoover, Mr. John W. Davis, Mr. Alf Landon and Mr. Beers, the Boy Scout leader. Would that change your view?

MR. MATTHEWS: Change his view on Thomas?

MR. FRAZER: No, on the National Rededicationists.

A. Well, I would like to know more about it. I am very suspicious that some of these gentlemen has been deceived. They would not knowingly go into that group.

Q. Mr. Mayor, you referred in your testimony, or not in your testimony but in your speech of January 12th, wasn't it?

A. You mean at the Armory?

Q. Yes, January 12th.

A. Yes——

Q. Among other Red organization you referred to the Lawyers Guild?

A. Yes.

Q. Did you know that since that speech the Lawyers Guild had been unable to procure a hall in which to speak or meet in Jersey City?

MR. MATTHEWS: I object, if your Honor please, they are not a party to this proceeding.

THE COURT: I will rule as I did before on it.

MR. FRAZER: I don't remember how your Honor ruled.

THE COURT: Against it.

MR. FRAZER: Against it. I will ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Now, in Commissioner Casey's reply to my letter, as I recall it, of December 23d, there was annexed a copy of the resolution stated to have been adopted by the meeting of the veterans and signed by certain members calling themselves a Committee of Veterans of Jersey City, and the names signed were Mr. Hugh A. Kelly as chairman of the committee, who I understand is the Governor's secretary—

A. Yes.

Q. There were five other gentlemen who signed their names, Charles A. Peterson; do you know him, does he hold any public job?

A. I don't know. I would have to check on that, Counselor.

Q. Well, I wonder if I can refresh your memory. Isn't he employed in the Second District Court of Jersey City?

A. Yes, I think he is; I am not sure, Counselor.

Q. David A. Mimmo.

A. I don't think he holds a position, Dave Nimmo.

Q. You think not?

A. I think not.

Q. William E. Malinka?

A. I am not personally acquainted with him, Counselor.

Q. You don't know him?

A. I have heard his name but I don't know the gentleman.

Q. Well, would you know whether or not he was appointed by the School Board to a position?

A. Well, if the record shows it, yes.

Q. I have no record, this is merely my best information.

A. Well, I don't know; I wouldn't say no, I wouldn't say yes. It is possible. I say I am not acquainted with him personally.

Q. George A. Reilly?

A. I know George Reilly.

Q. Works for the Boulevard Commission, doesn't he?

A. I think he does.

Q. Louis F. J. Borgers?

A. Does the record show he occupies——

Q. Well, my information is he works in the Surrogate's office.

A. It is possible, I don't know these boys.

Q. And my information is that William E. Malinka was appointed as a member of the Optometry Board,—does that refresh your memory,—by Governor Moore?

A. I don't know, possibly.

Q. Now, Mr. Mayor, when you say that under the present temper of the people you would deny permits you determine in advance whether the matters which are to be spoken at those meetings for which permits are denied are of a type to lead to disorder?

A. Yes.

Q. You don't attempt in any way to find out what is going to be spoken at those meetings?

A. Well, not necessarily; it does not require that, Counselor; it entirely depends on who the application is.

Q. Now, the papers for many months have carried a sort of quotation "I am the law Hague." I understand that the circumstances under which that statement was made were very creditible to you, but isn't it a fact that you have such a dominating influence in affairs in Jersey City that your word is effectively the law there?

A. Well, of course, as head of the government for twenty-five years, associated with and as head of it, naturally everyone feels that they would confer with me and that my judgment would be ascertained in all questions because I am the oldest man today in actual service in the government of Jersey City and practically in the government of the county, and it is only natural, Counselor, that everyone would seek my advice and seek my judgment on that.

THE COURT: I will have to interrupt again. Sorry.

(12:17 P. M., following a short recess.)

By MR. FRAZER:

Q. Mr. Mayor, during the recess, one of the newspaper reporters spoke to me and said that on account of the intimacy of our examination, your voice sometimes didn't carry. Would you mind raising it a little?

A. Yes.

Q. So they can hear?

Now, as I recall, you were saying when the recess occurred, that your judgment was asked for in most instances?

A. Yes, sir.

Q. And I assume that when you have expressed your judgment, it is given great weight?

A. Well, it is considered very seriously, because of my long years of experience in municipal government and county and state government.

Q. How many employees are there in Jersey City?

A. On the payroll?

Q. Yes.

A. (No answer.)

Q. I mean roughly.

A. I don't imagine it goes over three thousand.

Q. And in the county?

A. Oh, the county probably is less. Well, maybe three thousand, twenty-five hundred. I am not sure.

Q. And when you say county, does that include——

A. Hudson County.

Q. The Boulevard?
A. Yes.
Q. As well?
A. Yes, all——
Q. Yes.
A. Counselor, you didn't let me finish, if I may.
Q. Oh, did I interrupt you before?
A. No.

MR. MATTHEWS: He hadn't finished his answer, as I recall it.

A. (Continuing.) On that "I am the law"—"I am the law."

Q. I thought that you had come to a stopping point——
A. Oh no.
Q. —when the Judge got up.
A. You see, that's unfair to me, to leave that abruptly cut off.
Q. Very well.

THE COURT: Yes, I think the Mayor ought to be allowed to finish his answer. What was the last answer?

MR. FRAZER: I am perfectly willing he should, sir. I didn't mean to cut him off.

THE COURT: Yes, I think it was my fault.

A. I have never desired to be the law, Counselor. I have always felt that the courts was the law and still maintain that the courts is the law of our state, city and county.

In this affair that quoted me, that was this man Zerner. He was present at a meeting at one of the churches in our city, a hundredth anniversary, at which I had the honor of being the principal speaker, and I was discussing a special service bureau there, and the Board of Education handling the boys, and I said that how two cases was brought to my office by the head, Dr. Hopkins, the assistant superintendent of schools—two boys had refused to go to school. One was

twelve and the other was thirteen years old, and he had decided that he was going to send these boys to a state institution for violating the truancy laws of our City, and the question was brought before me in my office in an official manner, and I discussed with the boys just exactly what was before them. I said to Dr. Hopkins, "Isn't there no way that we can adjust this matter whereby we can save these boys from being committed to a penal institution?"

I asked the boys then, was it possible for me to convey upon them and convince them that they should return to school, that I wanted them to become educated and be good boys, and their answer was, "No, no, that they did not like school, that they were tired of it, they did not get along with the teacher, and that they were tired, they wanted to go —that they would prefer to go to an institution."

I said: "Do you want to enter into a life of crime and be a bad boy?"

They said, "We do not care."

I then turned to the boys and said to the boys, "Don't you think it would be nice if we was to arrange to have you earn four of five dollars a week to support your mother and your family?"

He says, "Can that be possible?"

I said, "Well, if I tried, would you like that? You love your mother."

"I love my mother."

So the boys agreed. I then—Hopkins interrupted me; he says, "Mr. Mayor, that's a violation of the law. The Working Papers Law in this state is a 16 year period. You cannot send these boys to work."

I turned to him and said, "The boys are going to work. I am the law in this case."

Now, that's what was interpreted as "I am the law."

Now, I was glad of an opportunity, Counselor, to clear that matter up, because I have no desire of being the law. I have no desire of ignoring the courts which is authorized to interpret the law, and I have always been obedient to

courts and court orders, the same as I have in this case and in every other case.

Q. Now, you sent those boys to work despite the law?

A. Yes. I saved the boys from a criminal career.

Q. Now there is testimony in this case, Mayor, that there were some young girls down in the——

A. Parental home?

Q. —Harborside Building, who are under sixteen years of age. Are they doing it on the same basis?

A. No, I know nothing about those cases, Counselor. If I had my way those children would be in school.

THE COURT: Excuse me just a minute again, Dean Frazer. I am sure you understand the situation.

MR. FRAZER: I do perfectly, sir.

(At this point a short recess was taken.)

THE COURT: I apologize to you, Mr. Witness, for interrupting you that way.

Q. Had you finished your answer?

A. Well, other than as I understand, Counselor, the choice between the boys was a life of crime or violating this law in a technical manner. It probably lasted not more than six or seven months until we got the boys back into school again. I thank you for giving me that opportunity.

Q. Well, I said in opening that I understood it was not discreditable to you. Now, I want to ask, Mr. Mayor, whether realistically considered your statement at that time is not true of your position in Jersey City.

MR. HAMILL: I want to say to the Court that Mr. Matthews is conducting this examination and there may be some things that examining counsel might want to know.

MR. FRAZER: I beg your pardon, I didn't notice he was out of the room, Mr. Matthews.

THE COURT: No, I am the offender.

MR. MATTHEWS: I am sorry. He answered that it is not. He says that he respects the Court. He said that the courts are the law. That is realistic enough.

Q. I am asking him if it is true or not.

MR. MATTHEWS: His answer is no to that; he has already given it.

MR. FRAZER: Counsel is again testifying, may it please the Court.

A. No.

THE COURT: You may answer.

MR. MATTHEWS: No; he has answered.

Q. And yet despite the decisions of the New Jersey Court of Appeals in the Butterworth case, in the Edgewater case, of the United States Supreme Court in the so-called Griffin Georgia case, and the United States Supreme Court in the Oregon case, you carry on in Jersey City the same methods which you used before those decisions?

MR. MATTHEWS: I object, if your Honor please, there is no such testimony in this case and there will be a discussion of those cases with the Mayor in his examination. As one examines the Butterworth case and examines Black and Lloyd's opinions on what an unlawful assembly is and then examines Kalisch's opinion, one will find that unlawful assembly from the common law—and it is a common law offense—is just what we have defined it in this case, and that the conduct which has been prohibited in Jersey City is conduct in violation of the common law definition.

MR. FRAZER: May I say I am not asking the Mayor to construe the law, I am asking whether despite the decisions in those cases his conduct has not been the same.

MR. MATTHEWS: Your Honor, those are not the decisions and his conduct is not in violation of any de-

cisions. His statement is that the conduct of Jersey City is entirely in accordance with the law and I will show it to this Court in the examination of the Mayor.

MR. FRAZER: That is Mr. Matthews' privilege. I asked if the conduct had not been the same subsequently as previous to those decisions. I am not asking the Mayor to construe it.

THE COURT: I think, Dean Frazer, you will have to divide the question. You mentioned, I think, three decisions.

MR. FRAZER: I mentioned four, sir; I could mention six.

MR. MATTHEWS: In fact, there are a dozen including the Gitlow case that you didn't mention.

MR. FRAZER: Sounds like the man who murdered Garfield.

MR. MATTHEWS: Oh, no, Garfield Hays. Gitlow is contemporaneous with Garfield Hays but not with Garfield, whose name he took. Gitlow is a modern; he went to jail in New York for unlawful assembly.

Q. Since the decision in the Georgia case, Mr. Mayor, your police have taken up circulars from persons attempting to distribute them in Jersey City, have they not?

MR. MATTHEWS: I object, if your Honor please. He said they were taken up to prevent disorder, not in violation of the opinion.

MR. FRAZER: I am asking a question. I don't think counsel needs to explain every question I ask.

THE COURT: Would it be agreeable to counsel if I adjourned to a quarter to two? I don't like to keep interrupting.

MR. FRAZER: Very well, sir.

MR. MATTHEWS: All right, your Honor.

(Thereupon a recess was taken to 1:45 P. M.)

AFTERNOON SESSION.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Resumed).

BY MR. FRAZER:

(Question repeated by the reporter as follows:

"Since the decision in the Georgia case, Mr. Mayor, your police have taken up circulars from persons attempting to distribute them in Jersey City, have they not?

"MR. MATTHEWS: I object, if your Honor please. He said they were taken up to prevent disorder, not in violation of the opinion.")

THE COURT: This is the opinion, isn't it, Dean Frazer, this Butterworth case?

MR. FRAZER: No, this is the Georgia case, I think I referred to, the Griffin Georgia case.

THE COURT: Will you read that again?

(The reporter re-read the question.)

THE COURT: If you know.

MR. MATTHEWS: Of course, my objection was placed, your Honor didn't rule on it.

THE COURT: I will allow the question and give you an exception, adding "if you know, Mayor."

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: My objection was, you know, your Honor, that he already said that the only objection they had was disorder as created by them. It wasn't the mere giving of the circulars. He explicitly stated that on the record.

MR. FRAZER: I am not asking what the reason was. I am asking a simple question, purely.

THE COURT: Yes, you may answer, Mayor; if you know.

A. Yes. As I stated, Counselor, earlier——

Q. You have answered the question, Mr. Mayor.

A. Well, I said yes, but I told you that they were taken up because of the fact that they were about to create disorder and it was displeasing to the people who were receiving them, being forced upon their person.

Q. Now, in Coughlin v. Sullivan, an opinion by Justice Minturn, this same ordinance was under construction, was it not?

A. I think that is true.

Q. And in that case there were circulars distributed by a group known as the Faithful Government Forces. Ever hear of them?

A. Is that one of those political groups?

Q. I don't know.

A. I think that Bill Coughlin was active at that time. I think that was a political group.

Q. I am reading from Justice Minturn's opinion. "The record shows that the pamphlets which criticised the municipal administration were all distributed in stores save one pamphlet given to a pedestrian."

That was in a local Jersey City campaign, was it not?

A. I believe it was.

Q. And the persons who distributed those circulars were arrested?

A. Oh——

Q. And sentenced under the ordinance?

A. They must——

Q. And this was on certiorari?

A. They must have been.

Q. That case was decided on September 29, 1924.

A. What Sullivan is that, Counselor? Is that the health officer?

Q. No, it is Judge Leo Sullivan; Judge Leo Sullivan.

A. Oh, oh.

Q. Who was the Judge who convicted——

A. We have a health officer Sullivan, yes. The Judge has been dead so long.

Q. So that in 1924 already there was a decision of the Supreme Court of this State holding that the arrest fo he distribution of circulars of a public character was improper?

A. Oh, no, that wasn't it.

MR. MATTHEWS: That was not the decision, your Honor please.

A. That decision was before the adoption of this ordinance.

THE COURT: You took that off my bench, didn't you, Dean?

MR. FRAZER: Yes, your Honor, I did.

A. (Continuing.) Wasn't that before the adoption of this ordinance, Counselor?

Q. Beg pardon?

A. Wasn't that before the adoption of this ordinance?

Q. What is the date of this ordinance?

A. Wasn't that the case that led up to the adoption of the ordinance?

Q. The ordinance in question was adopted January 22, 1924, and the case was decided in December, 1924, the same year.

MR. MATTHEWS: But your Honor will recall, however, that case, I am prompted by Mr. Hershenstein, that in that case the circular was not distributed on the street, it was given to a storekeeper.

MR. HERSHENSTEIN: Right.

MR. FRAZER: That is not right.

THE COURT: The opinion says "distributed in stores save one pamphlet given to a pedestrian."

MR. FRAZER: There was proof made in the cause that there was distribution to a pedestrian.

MR. MATTHEWS: One pamphlet to a pedestrian; the others were distributed in a store.

MR. FRAZER: Yes.

THE COURT: He distinguishes, I mean Justice Minturn distinguishes between advertising circulars and circulars which deal with the management or alleged management of municipal affairs—that is quoted—in that opinion he distinguishes.

MR. FRAZER: The character of the circular being distributed, circulars of public import in which the public would be interested.

MR. MATTHEWS: The only way to ask the Mayor a question on that opinion is to confront him with the findings of the Court in the words of the Court.

MR. FRAZER: I confronted him with the opinion; I was reading from the opinion.

THE COURT: I will read from the opinion, I mean if this isn't satisfactory—the part I am reading, "Defendants were convicted of violating the above ordinance and handing out circulars in front of a theatre where a moving picture exalting the activities of the Ku Klux was being exhibited. The circular distributed bore the announcement——" is that this case—no, that is another case, I beg your pardon.

MR. FRAZER: That is a citation from a New York court in support of the Court's opinion here, which shows the basis and ground of the Court's opinion.

THE COURT: Yes, that is a New York case. It didn't have it in quotation marks, which misled me. The only part with reference to the facts in New Jersey is the part I already read. "The record shows that

the pamphlets which criticised the municipal administration were all distributed in stores save one pamphlet given to a pedestrian."

MR. MATTHEWS: But the holding of the Court was what I thought he ought to be confronted with, your Honor.

THE COURT: I beg your pardon—the conviction was set aside.

MR. MATTHEWS: I mean the reason why the Court set the conviction aside.

MR. FRAZER: If your Honor will let me have it I will be very glad to read it to the Mayor.

THE COURT: I think I read it.

MR. FRAZER: I thought you did, but I would like to accommodate counsel if he wishes more of it. Now, wait a minute, wait a minute, I don't like to be surrounded by people all the time.

MR. MATTHEWS: I love to surround you but what I want to know is——

THE COURT: Dean Frazer has claustrophobia, so stay away.

MR. MATTHEWS: Well, that isn't so bad to have sometimes; I go away.

Q. I have the wrong page now; this is what the Court reasoned: "It is a matter of common knowledge, of which the Court will take judicial notice, that certain circulars, pamphlets, &c., especially such as advertise commercial or business enterprises, when indiscriminately distributed to pedestrians, having no desire or use for them, are cast away so as to litter the streets. The natural and ordinary result of the distribution of such circulars being to litter the streets, an ordinance prohibiting their distribution is

adapted to and reasonably necessary to prevent such evil. The principle is elucidated in Harvard v. Tremble, 97 N. J. Law 173.

"The pamphlet here in question is of a different nature, containing as it does the views of a number of citizens as to the management or alleged management of municipal affairs, a matter in which they, as well as all other persons, are vitally concerned. It cannot be presumed in the absence of evidence that the recipients of such pamphlets would throw them away. As to such pamphlets, containing matter of public interest, the ordinance operates unreasonably in this respect beyond the occasion of its enactment and is unduly oppressive."

MR. MATTHEWS: Thank you.

Q. That is the reasoning of the Court. Now, that was decided upon this particular ordinance in December, 1924. I understood you to say, Mr. Mayor, that you followed the rulings of the Court. Have you followed the ruling of the Court that the interference with distribution of pamphlets of this type is improper?

MR. MATTHEWS: What type?

MR. FRAZER: Of the type which has just been described in the section which I read from Justice Minturn's opinion.

MR. MATTHEWS: There is no evidence any such pamphlets were distributed.

THE COURT: Of the type offered in evidence.

MR. MATTHEWS: That is different.

MR. FRAZER: I am asking him whether the——

THE COURT: Add——

MR. FRAZER: —type described by Justice Minturn, I will refer to the Court as to whether those in evidence are of that type or not——

THE COURT: Will you answer, Mayor?

THE WITNESS: Yes.

A. As I understand, Counselor,—is this the case that was taken up by the second branch of the Supreme Court from Justice Minturn's opinion? Was that taken up?

Q. No, sir.

A. Well, how——

Q. It was Justice Minturn sitting for the Supreme Court.

A. Well, could you enlighten me how this same identical ordinance could be sustained by Justice Case?

Q. I can.

A. How did that happen?

Q. It was never sustained by Justice Case.

A. Yes, sir.

Q. Not this same identical ordinance. Section two of this ordinance was sustained as a proper exercise of the police power.

A. I am not trying to avoid anything. I am trying to be enlightening.

Q. I am trying to enlighten you Mr. Mayor.

A. There seems to be some confusion——

THE COURT: Section two, Mayor.

THE WITNESS: It is a little mixed up to me.

THE COURT: Section two was sustained by Justice Case, which covered, as I understand it, unsolicited advertising circulars.

MR. FRAZER: Which were distributed by leaving in mail boxes and throwing in areaways.

Section one is the one which is here being dealt with and which was the subject of Justice Minturn's opinion.

MR. MATTHEWS: You didn't read the balance of that opinion.

MR. FRAZER: You can read any part of it that you wish to.

MR. MATTHEWS: With the permission of counsel and the permission of the Court, adding to where Mr. Frazer read, his last wording being "is unduly oppressive," the Court said:

"The record shows that only one pamphlet was handed to a person on the public streets. Considering the mischief to be prevented and the express language of the ordinance, it is evident that a distribution to the public generally, or to a considerable number of people is intended and not a handing to only one or two persons. Under my other interpretation there could exist no real evil to be prevented."

So the point is this, that this opinion said if it were to be given to the public generally, then indeed it would make a difference.

MR. FRAZER: Then we will continue where Mr. Matthews left off, or a little further along. Referring to the New York ordinance——

MR. MATTHEWS: May I look?

MR. FRAZER: Yes, certainly. You may not look over my shoulder but close at my side.

MR. MATTHEWS: Close at your side, yes.

MR. FRAZER: "The New York ordinance provides 'no person shall throw, cast or distribute any handbill, circular, card or other advertising matter whatsoever in or upon any street or public place.' "

Very similar. The Court then goes on to state the portion which your Honor started to read, about the Ku Klux Klan, this case being cited in support of Justice Minturn's position. He quotes the Court's remarks:

"It would be a dangerous and an un-American thing to sustain an interpretation of a city ordinance

which would prohibit the free distribution of a body of citizens"——

MR. MATTHEWS: "by a body."

MR. FRAZER: —"by a body of citizens of a pamphlet setting forth their views against what they believe to be a movement subversive of their rights as citizens," and so on. That was a very broad——

MR. MATTHEWS: Read the and so on.

MR. FRAZER: You may read the and so on, if you wish to.

MR. MATTHEWS: And so on, quoting: "The Constitution of the State of New York . . . provide that every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or of the press. The primary purpose of the ordinance . . . was to prevent the littering of streets with commercial advertising . . . The ordinance within reasonable limits is a proper one and should be sustained but no city ordinance, no matter how worthy its intendment, should be permited in any way to curtail any of the fundamental rights of the citizen. The circular in question was a protest against what was believed to be a movement which encouraged discrimination against certain religious beliefs, and whether or not there was a sound basis for that belief, they were within their rights in making public their protest against such a movement and to make known their protest they used possibly the only means available by the distribution of circulars and pamphlets to the public. People v. Johnson, 117 Miscellaneous Reporter, 133, 191 New York Supplement, 750, case decided 1921."

MR. FRAZER: That was very nice of you.

MR. MATTHEWS: Thank you, Spaulding. I learned it long ago.

"These views seem to be illustrative of the general principle which should govern cases upon the constitutional guaranty of free speech insofar as that right can be reconciled with the general police power of the municipality to preserve law and order in the administration of municipal affairs."

The accentuation is mine, it is not in the record.

"Finally, this view of the situation results in setting aside the conviction."

MR. FRAZER: Thank you. You have saved my voice.

MR. MATTHEWS: You are welcome, Spaulding.

MR. FRAZER: I think the witness already answered the question.

Q. I am right? You did, did you not, Mayor?

A. (The witness nodded.)

Q. Now, following that decision, there was a well known decision in Edgewater in which Miss Nancy Cox was the prosecutor.

A. Is that the Bodine——

Q. That is the Bodine case.

A. Justice Bodine's case?

Q. Yes. That is the Bodine decision. You know that.

THE COURT: Is that a cited case, Mr. Frazer?

MR. FRAZER: Yes, sir.

THE COURT: Could I have the citation?

MR. FRAZER: Very glad to give it to you. I think the Court——

THE COURT: Oh, is that the Edgewater case?

MR. FRAZER: That is the Edgewater case.

THE COURT: Allen?

MR. STOFFER: It is unreported.

MR. FRAZER: Oh, it is unreported, and we gave you a copy of the opinion.

THE COURT: Oh, did you hand it to me? I beg your pardon. Oh, yes. No, I don't——

MR. STOFFER: It was in the same volume; it is in the 12 Miscellaneous volume.

MR. KAPLAN: Here it is again.

THE COURT: Oh, all right.

MR. FRAZER: Here is another copy of it, your Honor (handing to the Court).

THE COURT: All right; thank you.

MR. MATTHEWS: How would the Mayor be familiar with it if it is not reported, Spauld?

MR. FRAZER: He said it is familiar to him, and I imagine your very able law department keeps him advised in matters of municipal importance.

MR. MATTHEWS: My department?

MR. FRAZER: Well, I always associate counsel with his client.

MR. MATTHEWS: That is very nice of you, Spaulding. I hope I don't have to do that with you in your case.

MR. FRAZER: I hope you will.

Q. So that, Mayor, actually, in the daily functioning of the government of Jersey City, your statement made under the circumstances we discussed earlier, "I am the law," is to all practical intents and purposes true, isn't it?

A. Yes.

MR. MATTHEWS: What is that? I object to that question.

THE WITNESS: What was that?

MR. MATTHEWS: You don't know what he asked you, Mayor. Will you repeat the question?

THE WITNESS: He asked me——

MR. MATTHEWS: Just a minute. Let him repeat the question.

THE WITNESS: Well, I know——

MR. MATTHEWS: Will you listen to this question?

(Pending question and answer read by the reporter.)

THE WITNESS: I misunderstood him.

MR. MATTHEWS: Yes, you did, Mayor.

THE WITNESS: I misunderstood the Counselor. I thought he meant in an advisory capacity, that I was consulted with all the different departments. Now I don't like the idea of you injecting "I am the law."

Q. Well, I was simply trying to summarize your position.

A. Yes.

MR. MATTHEWS: He was simply trying to tie you up in a knot, and I walked in in time. The answer is you don't, isn't it?

(The witness nodded.)

MR. FRAZER: Now, if it please the Court, I would like to ask permission to allow Mr. Ernst to ask the mayor a few questions.

MR. MATTHEWS: I have no objection. I think Mr. Ernst ought to be allowed to ask the mayor some questions.

THE COURT: All right.

By Mr. Ernst:

Q. Mayor, what year did you go to Russia?

A. I think it was '36.

Q. '36?

A. It is two years this summer, this July.

Q. You found an absence of the right of public assembly, I think you testified, people couldn't talk on street corners?

A. No, nobody was allowed to talk on street corners.

Q. And there was an absence of freedom of press?

A. Well, the press was strangled.

Q. Strangled?

A. There was no such thing as press.

Q. And the right of religious worship?

A. No such thing as religious worship.

Q. Now, one of the distinguishing features between this democracy and Russia is that we have that bill of rights for free speech, free press, religious worship?

A. Yes, sir.

Q. Public assemblage. Are we agreed?

A. I agree. That's what we are defending here.

Q. That's right. That's the issue. Now will you give me your definition in any words you want of the words people use now called "Nazi," "Naziism"?

Mr. Matthews: I object to that as immaterial and irrelevant to this issue.

The Court: I think we had it once, Mr. Matthews. I will allow it again.

Mr. Matthews: Nazi?

Mr. Ernst: No.

The Court: Didn't we?

Mr. Ernst: Your Honor, I don't recall it.

Mr. Matthews: No.

The Court: We had some question about Naziism, I remember.

MR. ERNST: Yes, we had a question as to whether they were allowed in, whether they were banned from the Civil Liberties. I would like to get the general definition.

A. Well, you will have to give that. I have no definition for that.

Q. In your opinion, does the word "Nazi" mean the same as "Communism," in that there is always a denial of free speech, free press, public assemblage, and freedom of religious worship?

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: If the mayor knows. I don't know whether he knows.

MR. MATTHEWS: The mayor might be asked whether or not he thought Mr. Ernst would look good in a brown suit, but it wouldn't have anything to do with this case.

THE COURT: You may answer. You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Sealed)

A. I will not set myself up as an expert in those isms. I don't know.

Q. You can't do it. Can you define——

A. The only ism I feel I am an expert in is Communism.

Q. Can you define Fascism?

A. No, you define that.

Q. You can't define that either. Will you agree with me that under Naziism and Fascism there is also not that degree of civil liberties which we practice in this democracy?

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: You may answer. I think it is a fact anyway.

Q. Well, I just wanted to know whether the mayor knew it or whether his discrimination was only in one direction as to permits and civil liberties.

Will you repeat my question, please?

(Question repeated by the reporter.)

A. We have never been confronted in this country with those types of isms, as I recollect, not in Jersey City. Therefore I am not qualified to discuss it or to explain just what they mean.

Q. You have made no investigation or study of it?

A. There is no occasion for it. It is absent; it is entirely absent.

Q. Oh, Mayor, I didn't ask you whether it was absent.

A. How can I qualify if I have never been confronted with it?

Q. Just a moment. I have just asked you a simple question.

A. I am trying to answer it.

Q. No, you are not. I have asked you whether you have ever investigated it.

MR. MATTHEWS: He said he had not, he had no occasion.

A. I had no occasion.

Q. I don't care whether you had any occasion. I want to know—you can tell that to your counsel later—did you ever investigate whether you had occasion or not?

A. No.

MR. MATTHEWS: How can he investigate it if he had no occasion?

MR. ERNST: All right. Let us have an answer to the question and we will get along more quickly.

Q. Have you ever investigation sufficiently to give us a definition of I. W. W.?

A. Of what?

Q. Of I. W. W.?

A. Other than what I read in the public papers I never investigated that; we were never confronted with that either.

Q. In your opinion would you say that the I. W. W. is the same as Communism?

A. Yes, yes, that is Communism under another name.

Q. How about——

MR. HERSHENSTEIN: Let him answer.

Q. How about the Anarchist?

A. The I. W. W. was just a little too rough; they were hanging them all.

Q. I am not asking you——

A. Just a minute.

Q. No, no.

A. Just a minute, you——

Q. No, I am going to ask you questions.

A. Yes, but before I answer them don't smother me. Just a minute. We got along very peacefully——

MR. ERNST: Your Honor, I want a responsive answer from this witness. It is about time he answered my questions.

THE WITNESS: We got along peacefully until this gentleman injected himself.

MR. ERNST: No evasive answers to questions.

MR. MATTHEWS: He has not evaded answers to any questions.

THE COURT: Mr. Ernst, may we cool down a minute? It is a curious thing the difference between actual government and paper constitutions. I don't know whether I will be accused of being a Communist but I have the Soviet constitution here, as I am writing a book on Federations, and in Article 125 the people of Russia are guaranteed freedom of speech, freedom of the press, freedom to assemble and hold mass meetings,

freedom of street processions and demonstrations. I think it will be agreed that those are more honored in the breach than in the observance.

MR. MATTHEWS: And so do the people who stand for that in America. That is what the Mayor is trying to explain to Mr. Ernst.

MR. ERNST: Will counsel please not answer.

MR. MATTHEWS: Don't interrupt the witness and he will answer every question.

Q. If you are going to be evasive and going around the block——

MR. MATTHEWS: I object, he is not being evasive and not going around the block.

Q. Now, if you will let me go on with my next question. Did you investigate so that you can give me a definition of anarchy or anarchists, just whether you investigated?

A. No.

Q. Would you, in your opinion, say whether anarchy or anarchist is the same as communism?

MR. MATTHEWS: I object to that.

A. In my estimation, yes.

Q. He says yes. Now, do I understand that all of these groups, in your opinion, are what you have termed "undesirables?"

A. Yes, sir—all who, what groups?

Q. All of these groups that are the same, Anarchists, I. W. W.'s, Socialists, Communists.

MR. MATTHEWS: You haven't spoken of Socialists before.

THE COURT: I don't think that has been mentioned.

Q. I will ask you then: Have you investigated to find out what Socialists or Socialism is?

A. No.

Q. In your opinion would you sal Socialists are the same as Communists?

A. The Socialists of late have joined in with the Communists; that's been proven by their leader.

Q. I am not going to ask you—you can get that out later, how proven. You now say that they are the same?

A. Yes, sir.

Q. Mayor, in your investigation in regard to me, did you run across the fact that I was denied the right to enter Soviet Russia a year after you got in, did you ever run across that fact? Yes or no.

A. Are you sincere with that?

Q. I am sincere, sir.

A. Do you want my opinion?

Q. I just want to know, no opinion from you at all, sir.

A. Do you want an answer?

Q. I want to know just the answer, yes or no, did you run across that fact?

A. If you are here——

Q. No, no, Mayor. Did you run across the fact?

MR. MATTHEWS: I submit he is entitled to answer.

MR. ERNST: He either ran across it or he didn't.

A. Just a minute——

MR. ERNST: Your Honor, I don't want speeches.

A. I just want to confront you with the fact.

Q. I just want to know whether you ever ran across the fact.

A. This is an act you are putting on. You weren't denied any visas; don't try to ask me that question.

Q. I am asking you——

A. Don't insult any intelligence.

Q. I am merely asking you did you or not run across that fact?

A. No, I did not.

Q. That's all.

A. And I know very well it is an act, you and your side partner, is putting on here. You asked Commissioner Casey the same thing.

Q. Now, let's go on with the examination, may we?

A. Arthur Baldwin.

Q. In the course of your investigation you came to the conclusion, as you testified, that Morris Ernst was the man who had instigated the CIO. I want to ask you just simple questions. Did you come to that conclusion from newspapers?

A. I come to that conclusion from my investigation of watching and studying you.

Q. Now, will you kindly answer my question? In your investigation and study did you get that out of newspapers?

A. No.

Q. No. Did you get it out of a book?

A. No, I got it out of the people.

Q. Now, Mr. Mayor——

A. Just a minute. Did I get it out of a book. Why don't you let me tell you where I got it?

Q. I will get it my way.

A. Oh, no, you don't want that answer.

THE COURT: Just answer the questions, Mayor.

Q. Just answer the questions. Mr. Matthews can make notes, he has pages of them.

MR. MATTHEWS: Not on your testimony, nothing so far.

A. Did I get it out of a book.

Q. No book. Now, did you get it from a person?

A. Dozens of persons.

Q. All right. Will you name me one, just one. Don't name me dozens.

A. Just a minute——

Q. Name me one person.

A. Just a minute, you have been endeavoring for the last six months or a year——

MR. ERNST: Your Honor please, that is not responsive.

THE COURT: Please answer the questions, Mayor.

Q. Just answer the questions.

THE WITNESS: Now, your Honor, in fairness to me and to the people of this country I am not going to be permitted to allow this man to ask questions and answer them. Now, there is no use of us having any disagreement on this matter.

THE COURT: Mr. Matthews will clear it up for you.

THE WITNESS: The country is watching these proceedings and this man is not going to stand here and browbeat me, and I ask for the protection of the Court.

MR. ERNST: Your Honor please, I only want to find out if he got it from a person if so, to name one. Now, you can name a person. I didn't even ask him to name twelve; he said a dozen. I said "Name me one person from whom you got the information on which you base that statement."

A. In order for me to go to work and explain what I learned about you——

Q. I didn't ask you——

A. I cannot answer your question yes or no.

Q. I didn't ask what you learned about me, I asked you to name a person——

A. I told you——

Q. Can you name me one person?

A. I am trying to name them and you won't allow me.

Q. Name me one.

A. I am going to name twelve.

Q. You are going to name one; you can name eleven for Matthews.

A. No, I will name twelve to you.

Q. Now, behave yourelf, Mayor.

A. You behave yourself.

Q. We can get through quickly if the Mayor will act as if we were in a court room. Name me one.

A. You talked with Senator Milton, haven't you? You dined with Senator Milton.

Q. I didn't ask you if I dined with him. I ask you whether Milton gave you the information on which you made the statement.

A. You talked with Eddie O'Mara, didn't you?

Q. I didn't ask who I talked to, Mayor. Maybe you don't understand it.

A. I understand it only too well.

Q. No, you can't understand it if you answer it that way. I merely asked you to give me the name of one person which led you to make the statement that I was the inspiration for the CIO, not whether I dined or ate with him.

A. Well, why not refer to the records?

Q. Name me a name. You said there were twelve.

MR. MATTHEWS: Here is the record.

A. Why not refer to the records of the various investigations and the various write-ups?

Q. Mayor, I asked whether you read it out of a book.

MR. MATTHEWS: That isn't a book, that is the Fish report.

Q. I asked you if you got it from the newspapers. You said no. Then I asked if you got it from people and you said yes.

A. The Fish Investigating Committee is one.

Q. A person, I mean.

A. I am giving you that.

Q. Give me the name of a person who gave you this information.

A. Game me what information?

Q. Let's start again, Mayor. You said yesterday that I was the man who instigated the CIO.

MR. MATTHEWS: That is not his testimony.

MR. ERNST: I will read the testimony.

"That Morris Ernst was the man who was the instigator of this movement."

MR. MATTHEWS: What movement?

MR. ERNST: Referred to in the previous paragraph, the CIO—"in order to try to control this country." That is the quote.

MR. MATTHEWS: Page?

MR. ERNST: I haven't got the page.

MR. HERSHENSTEIN: Newspaper quote.

THE COURT: I think that is the testimony.

A. That's true.

MR. MATTHEWS: Not the CIO, the movement. The CIO is only one expression of the movement.

THE COURT: My recollection is it was the CIO.

Q. All right, Judge, let's clear that up too.

A. That is the truth, you know it is the truth and we are going to find out if it is the truth.

Q. I wish it were.

A. You are the general counsel.

Q. I wish I were.

A. You are the general counsel.

Q. Of what?

A. Of the CIO.

Q. I am not, sir, I wish I were.

A. You pose as such.

Q. I never posed as such.

A. You organized the Guild, the Newspaper Guild.

Q. Yes, sir, I am proud of that.

A. Did you organize the Lawyers Guild?

Q. I did, sir. Now, let's get back to your examination and stop this nonsense.

MR. MATTHEWS: This is not nonsense.

Q. I just gave you rope; you can subpœna me on the stand later.

MR. MATTHEWS: You have been subpœnaed.

Q. Just a minute, you can put me on. Now, let me get this; if you will be responsive we can finish in a short time.

THE WITNESS: Your Honor, I don't want to be disrespectful here but I am fearful that from the course of this gentleman's examination he is endeavoring to try to make this proceeding boisterous instead of orderly.

THE COURT: We will try to control that.

THE WITNESS: I don't want to be disrespectful to the Court.

THE COURT: I will use the gavel.

Q. Now, Mayor, let's start over again. Just think clearly and answer simply. You said yesterday that Morris Ernst was the man who was the instigator of this movement in order to try to control this country. What movement did you mean?

A. The American Labor movement.

Q. The American Labor movement. Now we have got that clear. Now I ask you, Mayor, did you get that information in part from any human being by word of mouth?

A. Thousands, thousands.

Q. Thousands. Now, Mayor——

A. All over the State of New York, all over the State of New Jersey.

Q. Now, Mayor, I want you to answer me one question. Name me one person that you got that information from by name.

A. On street corners.

Q. Name me a name.

A. Street corners.

Q. Is there anybody whose name you remember or were they all on street corners?

A. All on street corners and clubs and restaurants, that's common talk, you are posing as the great power.

Q. Can you name me one?

MR. HERSHENSTEIN: Let him finish.

A. (Continuing.) You are the one that brought this thing about.

Q. Name me a name.

A. You are posing as having it in your vest pocket.

MR. ERNST: Your Honor, I am asking him to tell me if he can name one.

A. (Continuing.) I am charging you personally with that.

Q. I want your to name me one name. You said you heard it from thousands. Can't you think of a person?

A. Why, it is common talk.

Q. Did you happen to ever talk to Herbert Lehman about it?

A. Who, the Governor?

Q. The Governor.

A. Why are you bringing him in?

Q. Because he appointed me, sir, to one of the highest positions in the State of New York.

A. Well, if Governor Lehman has been a fool and been fooled by you you are not fooling me.

Q. Did you talk to Governor Lehman?

A. No.

Q. Did you ever talk to President Roosevelt about it?

A. I don't have to talk to him either; if he has erred in his judgment that's his mistake.

MR. HERSHENSTEIN: Let him finish.

MR. ERNST: He doesn't have to finish, yes or no, and I don't have to have two counsel.

THE WITNESS: That's all right, he is a good man, too.

Q. Did you run across the fact that Governor Roosevelt while Governor of New York had appointed me a member of the Banking Commission of the State of New York?

A. Only in the paper, but I did run across this fact——

Q. No, no, sir, I will ask you——

A. (Continuing.) That while that bill that Senator——

MR. ERNST: Your Honor please, he just cannot do this in a court of law.

A. (Continuing.) I want to give you a little information.

Q. No, you can give it to Matthews.

A. I am going to give it to you.

MR. MATTHEWS: Matthews being your counsel, Mr Ernst is referring to.

Q. Now, did you run across the fact that Governor Earle had honored me with an appointment during last year? Just the fact, yes or no.

A. You hate yourself.

Q. Did you run across the fact?

A. No, I didn't run across the fact.

Q. Now, let's get on a ways. Did you make any investigation at all as to me prior to the time when the application for a permit for the meeting was turned down?

A. I have been reading about you in the various reports and your various activities as the head of this whole group.

Q. That is before the permit was turned down?

A. That is before and after.

Q. Before and after. Now, Mayor, have you got anything to say about the denial of permits for street corner meetings?

MR. MATTHEWS: I object to that, if your Honor please, whether he has anything to say. The evidence in this case is that there was no denial of permits except those in the record applied for for outdoor meetings, no hall meetings were denied.

MR. ERNST: Your Honor please, I am not addressing myself to denials at all.

THE COURT: You said street corner applications.

Q. Yes, street corner applications. Did he have anything to say about the denials or granting of street corner applications?

MR. MATTHEWS: I object because the witness isn't here to have anything to say, who should be interrogated.

THE COURT: The question is too general.

Q. Have you any power over the granting of permits for street corner meetings?

A. No, only a supervisory capacity; the Director of Public Safety does that.

Q. Now, do you know that Mr. Casey testified that prior to the time of his taking a position in regard to an application for a permit for various people, including myself, to speak, he made no investigation whatsoever in regard to the speakers?

MR. MATTHEWS: I object.

Q. Page 567 of the record.

MR. MATTHEWS: Just a minute, Mr. Mayor.

Q. Page 557. And I would like to read that to the Mayor to see whether he will agree with his supervised commissioner.

MR. MATTHEWS: That last part is not a part of the question, Mr. Mayor. I am following you, 557, but that happens to deal, Mr. Ernst, with Mr. Maverick.

MR. ERNST: If you would not fill up the record with talk and say what you think it has to do with me would go further.

MR. MATTHEWS: Well, if I had half the talk in the record that you have before I got here it would be just too bad. Mr. Casey testified about the machine guns.

Q. On page 551; I am in error as to 557. But I will come back to that in a moment. The question was asked: "Now there is a fourth person on that application, a man named Ernst. Did you look up whether he had spoken around at street corner meetings and whether there had ever been disturbances?

"A. (Of Mr. Casey.) I never heard of the gentleman until I saw his name on the application."

Do you recall that testimony, was that brought to your attention?

A. No, sir.

MR. MATTHEWS: Now, your Honor please, the testimony of Mr. Casey after that——

MR. ERNST: I just asked him and he answered it.

THE COURT: He has already answered it.

MR. ERNST: He answered it. We will just go along and save time.

Q. Mr. Mayor, do I understand from you that the American Civil Liberties Union is an undesirable organization, to use your words?

A. Yes, sir.

Q. And when you say it is an undesirable organization, do you mean only its directors, or do you mean its members?

A. I mean the heads of it. You are one of them.

Q. The heads of it. Now, does this mean, Mayor, in your judgment, that if the American Civil Liberties Union applies for a permit, they would be so undesirable that no one of its directors would be allowed to speak in Jersey City?

A. Not according to the testimony before the Fish Committee of Mr. Baldwin.

Q. Not according to your own judgment also?

A. My own judgment, they would not be entitled.

Q. They would not?

A. Because of the reputation of their heads.

Q. Well, now the answer is "They would not." We will get to the cause later.

Now, let me read you just a few of the names of the directors as of December, 1937, of the American Civil Liberties Union and see if you want to change your answer, or let it stand.

This is the National Committee, including among others, the following:

Edgar Blake, Bishop, Methodist Church, Detroit.

Richard C. Cabot, Professor of Social Ethics, Harvard University, and Professor of Medicine, Harvard Medical School.

John F. Finerty, lawyer, Washington, D. C.; former Assistant General Counsel, U. S. Railroad Administration.

Lloyd K. Garrison, Dean of Law School, University of Wisconsin; former chairman National Labor Relations Board.

Francis J. Gorman, first vice-president, United Textile Workers of America.

Hubert C. Herring, secretary of the Congregational Education Society.

Sidney Howard, playwright, president of Dramatists Guild of Authors League.

Frederic C. Howe, author, writer and lecturer; special adviser, Secretary of Agriculture; former Commissioner of Immigration at the Port of New York.

Henry T. Hunt, lawyer, former general counsel to Public Works Administration, Washington, D. C.

John A. Lapp, former Professor of Sociology, Marquette University, Milwaukee; assistant on labor relations to Administrator Public Works.

James H. Maurer, former president of the Pennsylvania State Federation of Labor.

Edward L. Parsons, Episcopal Bishop of California; president of Church League of Industrial Democracy.

Jeannette Rankin, former Congresswoman from Montana; now on staff of the National Council for the Prevention of War, Washington, D. C.

Clarence R. Skinner, clergyman; leader, Community Church, Boston; Professor of Applied Christianity, Tufts College.

Charney B. Vladeck, manager of the Jewish *Daily Forward*, New York City, and now majority leader in the county of Mayor LaGuardia.

A. F. Whitney, president, Brotherhood of Railway Trainmen.

L. Hollingsworth Wood, New York lawyer; president, National Urban League; chairman, Board of Trustees of Fisk University of Nashville.

Mary E. Woolley, former president of Mt. Holyoke College.

Richard S. Childs, business executive; president of City Club of New York.

Dorothy Kenyon, New York attorney; First Deputy Commissioner of Licenses, New York City; vice-president, Consumers' Co-Operative Services; member, Board of the New York Consumers' League.

Elmer Rice, playwright; honorary vice president Author's League of America.

William B. Spofford, executive secretary, Church League for Industrial Democracy; president, Christian Social Justice Fund.

Now, that was a long list, Mr. Mayor, and I will frame the question now, because you may have forgotten it.

As I understood you to say, the Civil Liberties Union was an undesirable organization, and the people at the top should not be allowed to speak in Jersey City.

MR. MATTHEWS: Now, if your Honor please——

Q. Do any——

MR. MATTHEWS: Just a minute.

Q. (Continuing.) Do any of the names which——

MR. MATTHEWS: That is not a statement of the fact.

MR. ERNST: I want to finish my question.

MR. MATTHEWS: This is just the window dressing. This is the National Committee that have lent their names, like so many others do, to an organization. The Mayor is talking about the Civil Liberties Committee as constituted by its directorate.

THE COURT: Mr. Matthews, wait a minute. I think he can talk for himself.

MR. ERNST: May I start over again, your Honor, please? When my question is finished, your counsel will have a right to object, and you should not answer until he has made his objection. I am not trying to trick you, but I don't want to be interrupted.

Q. You have heard that list of names, and I now ask you whether, having heard that list of names, consisting of members of the board of directors and the executive committee, the National Executive Committee, whether you

wish to change your testimony as to the fact that those names are unacceptable as speakers in Jersey City, under an application filed by the American Civil Liberties Union? Do you want to change your statement?

A. Do I want to change my statement?

Q. Yes.

A. No.

Q. So that none of those people could come into Jersey City at the moment——

A. You are just fooling them, that is all.

Q. No, no.

A. They don't understand.

Q. Now, Mayor, I didn't ask you that.

A. Yes. Well, I am answering that. You read off——

Q. But you can't answer me unless I ask you.

A. You——

Q. You are in a court of law and not at City Hall.

MR. MATTHEWS: I object to that.

A. You read off a list.

MR. MATTHEWS: You are in a court of law, but he should be confronted by a lawyer and not by a man who is peddling his wares.

MR. ERNST: If your Honor please, I am asking simple, direct questions. The Mayor hasn't had much experience on the stand, maybe—maybe he is being aggravated by his attorney. My questi s have all called for yes or no answers.

THE COURT: Read the question.

MR. ERNST: You can make your speeches later.

THE WITNESS: No, there is no speeches to be made here, just facts. You don't want to hear them.

MR. ERNST: All right, any time you produce them.

Q. Mayor, you are the vice chairman of the National Democratic Committee, aren't you?

MR. MATTHEWS: Objected to as immaterial to this issue. Your Honor has already ruled on that.

THE WITNESS: He was going to have me removed.

A. Yes.

MR. MATTHEWS: Just a minute. Don't answer, please.

THE WITNESS: A Communist going to have me removed from the Democratic national chairmanship!

MR. ERNST: He has already testified to it.

MR. MATTHEWS: No, he didn't. The Court ruled that out.

THE COURT: I sustained the objection.

MR. ERNST: If your Honor please, I would like to argue why I think it is material.

MR. MATTHEWS: It has already been argued.

MR. ERNST: I want to tell you exactly the testimony that I want to adduce.

MR. MATTHEWS: Now, I submit, if your Honor please, he just told him he was in a court of law—now he is trying to lug into this case what your Honor has already ruled out, to make it, as a newspaper called it this morning, a political case.

MR. ERNST: If your Honor please, I want to argue why I think it is admissible. I think it will become apparent to you, as it is to me, that it is pretty nearly imposible to argue the admissibility without pointing to the direction of the evidence.

MR. MATTHEWS: I object, if your Honor please, to arguing the admissibility of what has already been denied here.

MR. ERNST: It may be admissible on another score, your Honor, and may I point it out?

THE COURT: Yes.

MR. ERNST: Without interruption, just two minutes? The Mayor has used various terms, such as "offensive to the people of Jersey City," in respect to the CIO, and the Civil Liberties Union. He has also indicated that the American Labor Party was in general terms, I don't remember his exact adjective, but it is a synonym for the others, "unacceptable," a flim-flam, a deception, something of that kind. Now it seems to me that in order to get any kind of a definition that makes sense of any one of these vague words, which are the bases for the denial of the Civil Liberties in his mind—I want to examine him to find out whether the American Labor Party and the CIO is undesirable for other purposes in his life. I can go further and indicate it more clearly, if you wish me to. But out of respect for Mr. Matthews I am not indicating it at the moment.

THE WITNESS: Go the limit.

MR. ERNST: But——

THE WITNESS: Don't spare me.'

MR. ERNST: All right, sir.

THE WITNESS: Because I am not going to spare you.

MR. ERNST: Then I am going right on. Thank you.

THE WITNESS: Go right after it.

MR. ERNST: All right.

THE WITNESS: Take the gloves off.

Q. Let me ask you, then, you are the vice-chairman of the National Democratic Committee?

A. Yes, sir.

Q. Do you know, not as vice-chairman, but in your capacity as an active human being, that the United Mine

Workers of America is part of the CIO? That's John Lewis' own union.

A. The mine workers?

Q. Yes.

A. Yes.

Q. It is part of the CIO. Do you know whether the United Automobile Workers is part of the CIO?

A. Oh, the whole world knows that.

Q. All right.

A. The way they were murdered into it.

Q. I didn't ask you about the world. Let's just go easy on it.

MR. MATTHEWS: He said the way they were murdered into it. You misunderstood him.

Q. Do you know whether the Steel Workers Organizing Committee is part of the CIO—SWOC? Do you know that?

A. Yes, yes, everybody knows that.

Q. Do you know whether the rubber workers of Akron are part of the CIO?

A. According to the riots and bloodsheds and murders, yes.

Q. Yes.

A. I am enlightened by the public press.

Q. You still don't want to answer the questions yes or no, I take it?

A. I said yes.

Q. All right. Now I want to ask you, do you in your capacity as vice-chairman of the National Democratic Committee with respect to your use of the word "undesirables" repudiate the support——

MR. ERNST: I told him not to answer until you have an opportunity to object.

MR. MATTHEWS: Well, he is not going to pay any attention. Don't worry about that.

Q. (Continuing.) Do you repudiate the support of the United Mine Workers of America in aid of the——

MR. MATTHEWS: Go ahead. Go ahead. I am following your question.

Q. Continuing.) —in aid of the election of Senator Barclay at this moment? Do you repudiate——

MR. MATTHEWS: I object, if your Honor please. There is politics lugged in by this fellow who imagines he is a politician. Why, to ask that question, you are ruining your own cause. I object to it as being irrelevant.

THE COURT: Does the witness want to answer the question?

MR. MATTHEWS: No, the witness——

THE WITNESS: Yes, I don't object to answering that question.

Q. At-a-boy, Mayor. At-a-boy. Now we are going places.

MR. MATTHEWS: Just a minute.

MR. ERNST: That is all right; an honest witness here, if you will let him talk.

MR. MATTHEWS: Say, he isn't falling for you to tell him he is honest.

Q. Go ahead. Come on.

MR. MATTHEWS: Do you know what is said in the Good Book about one who pretends to be honest? That's you.

Q. Come on, come on, Mayor.

MR. MATTHEWS: Now, let the record show that while there was an objection launched against the Mayor testifying as to the vice-chairman of the Democratic Committee, about a political contest for a United States Senatorship, that the Mayor wishes to inform Mr. Ernst about it, and therefore that I will withdraw the objection; is that it?

THE COURT: I believe the Mayor has so indicated.

MR. MATTHEWS: Now, go to town with the baby.

THE WITNESS: Mr. Ernst asked me——

Q. Just let me give you the question, so we don't have a speech, just a simple question.

A. Yes.

Q. Do you repudiate the support of the United Mine Workers of America in Kentucky at the present time in behalf of the election of Senator Barclay on the ground that they are undesirables?

A. If the United Mine Workers of Kentucky is associated with the Reds and part and parcel of the Communist group, Senator Barclay should denounce and refuse to accept any support whatsoever.

Q. All right.

A. Because for that he would obtain thousands and thousands of Americans that would march to the polls in his support.

Q. All right. Now, Mayor, I want the stenographer to read my question; see if you can answer my question.

(Pending question read by the reporter.)

MR. MATTHEWS: He has answered that question, if your Honor pleases.

Q. Do you——

MR. MATTHEWS: He has nothing to do with Senator Barclay's campaign.

Q. I say do you as vice-chairman of the National Democratic Committee?

MR. ERNST: And he answered me, your Honor, and said that Senator Barclay should do so and so.

MR. MATTHEWS: That's right.

MR. ERNST: I want to know what this man does, in relation to his use of the word "undesirables."

MR. MATTHEWS: He has nothing to do——

THE WITNESS: Well, I have denounced them; I said to you, and in your presence, that I want nothing to do with your labor party here.

Q. I didn't ask you that, sir.
A. Well, it is the same——

MR. ERNST: Will you read the question to the Mayor, please?

(Pending question read by the reporter.)

MR. MATTHEWS: Now, if your Honor pleases, this man has said Senator Barclay should denounce them. He has no right to repudiate or anything else. He is not running Barclay's campaign. Maybe Ernst is.

THE WITNESS: I did answer it. Why don't you read my answer.

Q. Well, your answer, sir——

MR. ERNST: Read the answer. Let's get the Mayor cleared up on it.

Q. I want your statement, not what you think Barclay said.
A. I will give you my judgment, Counsellor.
Q. All right.
A. Don't worry about that.

THE COURT: I think the record ought to show that we are not familiar with the facts in Kentucky.

MR. MATTHEWS: Yes.

THE COURT: I mean it ought to be shown.

MR. MATTHEWS: If the Mayor wanted to talk politics——

MR. ERNST: No, no; the Mayor knows exactly what I am talking about.

MR. HERSHENSTEIN: He has given you what you want.

MR. ERNST: Will you read the Mayor's answer, where he referred to Americans, please?

(Answer read by the reported as requested.)

Q. Now, Mayor, let's start over and see whether I can make it clear to you. I don't want an answer with "ifs" in it. That's why I asked you first, whether you knew that the United Mine Workers were a part of the CIO. You say yes, do you?

A. (The witness nods.)

Q. Do you mind saying "yes" instead of nodding your head.

A. Yes, Counselor.

Q. Then I asked you, you have said that the CIO were undesirables, is that right?

A. Well, now, just a minute.

Q. Well, let's have it.

A. Wait a minute. I qualified myself, yesterday.

Q. Now, how did you qualify yourself, yesterday?

A. On the CIO rank and file.

Q. Yes.

A. I said clearly, very clear, and you heard me——

Q. That's right——

A. —that there was thousands and thousands of members of the CIO that was absolutely unaware of what was going on.

Q. That is right.

A. And that was forced in, forced in, to join because of fear and violence, and that the leaders was deceiving them.

Q. All right. And the leaders are undesirable?

A. Well, the records I examined show that they are, to me.

Q. To you?

A. That they are Reds.

Q. That's all I can ask; they are to you.

THE COURT: Mr. Ernst, have you got in the record a list of the leaders of the CIO, officially?

MR. ERNST: No. We can supply it, if it is wanted.

THE COURT: Is there an official list?

MR. ERNST: No, there is no one published list, but we can get it.

MR. MATTHEWS: Well, that's what we have subpœnaed.

THE COURT: Oh, that's what I thought.

MR. MATTHEWS: We will have it for you, Judge.

Q. Now, Mayor, let's go further, and I ask you, since the United Mine Workers is a part of the CIO, do you as vice-chairman of the National Democratic Committee, repudiate the support of the leaders of the United Mine Workers of America in behalf of the election of Senator Barclay on the ground that those leaders are undesirable?

MR. MATTHEWS: Now, if your Honor please, that question is no question to ask in this cause at all. First of all, it presupposes that as vice-chairman of the National Democratic Committee he knows that Barclay is running for Senator and that he has charge of his campaign.

MR. ERNST: The mayor wanted to answer it, your Honor.

THE WITNESS: No, no, wait. My answer is in there on the other question. It is the same question.

Q. It is the same what?
A. It is the same question that you ansked me.
Q. Would you mind answering my question?
A. My answer is in the other question.
Q. No, but your answer, Mayor, was if certain things happened, you see, and I don't want any misunderstandings; I want it definitely.

A. Senator Barclay—if he was familiar with the conditions, located in Kentucky, as I am with them here——

Q. Yes.

A. —he would repudiate them.

Q. He would?

A. Certainly.

Q. All right. And you as a member of the National——

A. How could he be an American and accept any such report as located in this state?

Q. And that's your feeling as a member of the National——

A. In this state, yes. I would repudiate them, and I have.

Q. Is that also your feeling as a member of the National Democratic Committee?

A. No.

MR. MATTHEWS: I object to that, if your Honor please.

A. (Continuing.) As an individual and as the head of the party of this state I repudiate them.

Q. All right. Now, Mayor, are you aware of the fact that in the last presidential election there were at least twelve electors in New York State of members and officials of the American Labor Party——

MR. MATTHEWS: I object.

Q. (Continuing.) —which electors were the electors for Franklin D. Roosevelt for president and which electors from the American Labor Party of your so-called undesirables included none other than David Dupinski, the head of one of the important CIO unions? Are you aware of that fact?

A. I read of the expose of David Dupinski—I read in the papers where they exposed him as a Communist.

Q. You are aware of that, are you?

A. Yes, yes.

Q. Now, do you want to repudiate that kind of support?

A. Yes.

Q. All right. Now, Mayor, out in Detroit, or in Michigan, Frank Murphy, a good friend of yours, and mine, I assume——

MR. MATTHEWS: Well, as to that we have no knowledge, that Frank Murphy is a good friend of yours.

Q. (Continuing.) Frank Murphy, running for governor, is having the support of the United Automobile Workers, a CIO union?

A. That's before, Counselor.

Q. Now, right now, re-election.

A. Oh, I am talking of his——

Q. No, I am talking of right now, this minute; and Homer Martin, the head of that CIO union, is offering his support to Frank Murphy, and is your answer the same, that Frank Murphy should repudiate the support of the 200,000 workers in the United Automobile Workers, part of the CIO?

MR. MATTHEWS: Just a minute, just a minute. Just a minute, Mr. Mayor. Mr. Mayor, you know that only yesterday Martin exposed and fired out three Communists in the CIO.

MR. HERSHENSTEIN: Five.

MR. MATTHEWS: Five Communists in the CIO, the Prince of Pilsen today, so I object to that question.

MR. ERNST: May I——

MR. MATTHEWS: Just a minute, just a minute. I object to that question, if your Honor pleases, because it is irrelevant to this issue what Frank Murphy does.

Q. Do you want to answer my question?

MR. MATTHEWS: I hope Frank is elected. He is a brother alumnus in Fordham of mine.

MR. ERNST: He is a guest of mine in Nantucket once a year.

MR. MATTHEWS: Oh, so you go to Nantucket, eh?

Q. Mayor, do you want to answer my question?

MR. MATTHEWS: I didn't know you could go to Nantucket.

Q. Do you want to answer my question, Mayor?
A. It is up to the counsel. I don't know.

MR. MATTHEWS: Objected to as irrelevant.

THE COURT: In this case, do you overrule your counsel or not?

MR. MATTHEWS: No, he hasn't done that. I don't think, with all respect, Judge Clark, that that is a fair remark.

THE WITNESS: I hope the counsel don't embarrass me with objecting, because I don't feel that there is anything——

Q. There is nothing——
A. (Continuing.) That I care——
Q. To hide?
A. To object to, but if the counsel insists——

MR. MATTHEWS: I object to this, and you don't answer it until I tell the Court. I am your boss on that stand, and don't you forget it.

Now, I object to the question as irrelevant, what happens in Michigan or in Frank Murphy's bailiwick.

MR. ERNST: May I argue to that a moment, your Honor?

THE COURT: Well, of course I must say that I don't know the conditions there.

MR. ERNST: No, it is unimportant, the conditions, your Honor. Let me tell you my point. This man, in order, as we see this record, to deprive people of what

we deem to be their basic rights under the bill of rights——

MR. MATTHEWS: I object and ask that be stricken out.

MR. ERNST: Let me finish my argument.

MR. MATTHEWS: Those remarks about this witness are unfair. He is back on the wagon, he is peddling again.

MR. ERNST: If your Honor please, can I speak uninterrupted?

MR. MATTHEWS: Well, I object to that statement on the record. That isn't a statement of a lawyer cross-examining a witness and offering an objection. That's just peddling.

MR. ERNST: If your Honor please, this man in order to predicate a theory on which he can deny, as we see it, the civil liberties, which we think we have proven were denied, in the record, it is for you to decide whether they were or not, has used various words, such as "undesirable," "offensive" and vague words that have different meanings to different people. They could even have different meanings to the same person at different times. It is important that we get to the real significance of those words in his mind, to know who in the future will be the "undesirables," who in the future may offend, as he uses those words of the English language.

THE COURT: I think the question——

MR. ERNST: Now, if your Honor please, he takes these people and he says they are undesirables, to the extent that they cannot speak in Jersey City, and are subject to other deprivations of civil liberties, but I want to find out whether he is consistent, and——

THE COURT: I think, Mr. Ernst——

MR. ERNST: But his counsel says he can't answer whether he is consistent in Michigan.

THE COURT: I think the question should be framed in such a way that if he were in place of Governor Murphy, though——

MR. MATTHEWS: That is the idea.

THE COURT: Or Senator Barclay.

MR. ERNST: He will say "I can't imagine myself being Governor of Michigan."

MR. MATTHEWS: No, he won't say anything of that kind.

MR. ERNST: And that kind of nonsense.

MR. MATTHEWS: He would say "I can't imagine myself being governor of Michigan at the instance of murders and burglars and thieves and rioters," that's what he will say.

THE COURT: Reframe your question.

Q. We will take the question that way, Mayor. If you were the Governor of Michigan, now, running for re-election, would you repudiate the support of the United Mine Workers of America, a part of the CIO, on the ground that they were what you termed "undesirables"?

MR. MATTHEWS: Now, if your Honor please, I object to that question as irrelevant to the issue, but I object to it further, because he has not given the mayor what he termed as "undesirables." The mayor has said those who are guilty of rioting, bloodshed and disorder. Of course, we would repudiate those.

MR. ERNST: On the ground, Mayor, may I correct it to read——

Q. On the ground of what you deem to be undesirable?

MR. MATTHEWS: No, unless you tell him what it is.

MR. ERNST: I will have to read it out of the record.

MR. MATTHEWS: Well, read it out of the record.

MR. ERNST: I don't intend to.

Q. Mayor, will you answer the question, or do you want to abide by the advice of counsel?

MR. MATTHEWS: Never mind about that bunk about "abiding by the advice of counsel." Let the Court rule on that.

MR. ERNST: No, I withdraw the question.

MR. MATTHEWS: I object.

MR. ERNST: I withdraw the question, if he wants not to answer it on account of you.

MR. MATTHEWS: All right, that's very generous of you.

Q. Do you want me to withdraw the question?

MR. MATTHEWS: Sure, do it, and don't waste any more time.

Q. Mayor, would you prefer I withdraw the question, or do you want to answer it?

MR. MATTHEWS: Just a minute. Don't fall for that bunk.

THE WITNESS: May I address you.

THE COURT: The Mayor wants to talk you.

MR. MATTHEWS: Oh, all right.

THE WITNESS: I mean may I address you just publicly?

MR. MATTHEWS: Certainly, go ahead.

THE WITNESS: I don't want it to appear that I am making allegations against anyone, and that if I was

in similar circumstances, that I would double deal, or would take a different position. I have no hesitancy in answering these questions, Counselor.

MR. MATTHEWS: Don't fall for that.

THE WITNESS: If you object, I of course will refrain from answering the question.

MR. MATTHEWS: I object, and you refrain.

THE COURT: The question is withdrawn, I think.

MR. ERNST: The question is withdrawn under the circumstances.

MR. MATTHEWS: Not under the circumstances but because I object.

MR. ERNST: The question is not withdrawn because of the objection, because I didn't get a ruling. It is withdrawn out of deference to the Mayor's position under the circumstances of his last statement, that's all.

MR. MATTHEWS: That's too funny for words!

Q. Now, Mayor, I would like to ask you this: did you also repudiate for the same reasons the acceptance of contributions for the purposes of the Democratic Party, from the American Labor Party?

MR. MATTHEWS: I object.

Q. (Continuing.) Financial contributions?

MR. MATTHEWS: I object as irrelevant to this issue.

Q. (Continuing.) On the ground that the leaders of the American Party are what you described yesterday in general terms as "Undesirable."

MR. MATTHEWS: Do you want to answer that? All right, you may answer it as far as I am concerned.

A. Will you repeat—you are talking about the acceptance of contributions?

Q. Yes, financial contributions to the Democratic organization.

A. It entirely depends, Counselor. If the purpose of the American—of the CIO—or the American Labor Party, was to endeavor to control or to apply influences upon the general Democratic Party, I would reject the contribution.

Q. Yes. But under the circumstances today, would you reject or not?

A. I would reject.

Q. You would reject?

A. I would.

Q. Now, would you also reject any contributions from the CIO, made to the Democratic National Committee, or any part of the committee, in which you had any voice?

MR. MATTHEWS: I object unless the Mayor wants to answer the question himself.

THE WITNESS: I would prefer to.

MR. MATTHEWS: All right, go ahead.

Q. All right.

A. Upon the reputation that has followed the CIO in various states and the confidence, the loss of confidence that the people has got in the CIO in America, I would reject them, because I think—because I feel it would be destructive to the party.

Q. And that applies also——

A. Other leaders differ with me.

Q. That's right. I am just getting your viewpoint.

A. I am talking about in this state.

Q. That's right.

A. I would reject them.

Q. Yes. And you would take the same——

A. I have no other power, other than here.

Q. No. But insofar as you would have a voice or a vote, as a member of the National Democratic Committee, you would take a consistent position there, wouldn't you?

A. I certainly would.

Q. Now, Mayor, that also applies to all of the underlying unions of the CIO, doesn't it? You wouldn't take any money——

MR. MATTHEWS: I object.

Q. (Continuing.) Nationally or locally?

THE COURT: I think the "underlying" is too broad.

MR. MATTHEWS: Yes.

MR. ERNST: Well, I will list some of them.

Q. The steel workers, the automobile workers, the rubber workers, for example, to start with; you wouldn't take any contributions from them?

A. Well, Counselor, I wouldn't to be consistent because I am opposed to their policies and their methods.

Q. That's right, you wouldn't take it from any of the unions either?

A. Well, I couldn't take it.

Q. That's right.

A. Because I couldn't agree—I don't agree with them.

Q. I respect your consistency, sir.

MR. MATTHEWS: Well, he doesn't care whether you do or not.

Q. Mayor, do you believe that peaceful picketing, peaceful picketing, should be allowed in Jersey City?

A. Peaceful picketing is permissible in Jersey City, Counselor.

Q. Is it permitted so far as you know in all cases of all strikes, where people want to picket?

MR. MATTHEWS: Just a minute.

Q. (Continuing.) Or are there strikes where you do not allow peaceful picketing?

MR. MATTHEWS: I object. That's not the issue in this cause, if your Honor please. Picketing isn't in

this cause. I don't know why we allow this man to roam around like this.

MR. ERNST: This man, your Honor, roams here because in our bill we claim that the Jersey City officials were interfering with organizational activities of unions.

THE COURT: Commissioner Casey testified at some length on this subject, Mr. Matthews.

MR. MATTHEWS: I remember; Commissioner Casey is head of the police department.

THE COURT: So I will permit the Mayor to answer.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Do you want the question read again or do you remember it, Mayor?

A. Well, I understand your question, in peaceful picketing, I interpret peaceful picketing that it means the authorities should regulate picketing, that is, mass picketing is not permitted.

Q. Right.

A. That is not peaceful picketing. In all labor controversies and all disputes the head of the police department or his deputies generally deems it advisable to wait upon the heads of the industries and wait upon the men who is involved in the strike and they always work out a peaceful method of picketing, a method of locating their headquarters, whereby they can be in constant touch with surroundings and conditions, and they generally allow from two to three to picket, they oppose the carrying of banners, they oppose mass picketing. The purpose of that is to try to open up negotiations immediately to adjust their differences. That is what our picketing system and method

in Jersey Ctiy is. In other cities they have various methods. We have been very successful in Jersey City with our method.

Q. Do you allow people to picket in front of a plant where the people who are picketing have never worked in that plant previously?

A. No, we do not.

Q. Do you allow people to picket in front of a plant where the pickets happen to come from some place out of Jersey City?

A. No, we do not. We think that is very injurious and very bad for the cause.

Q. Don't waste time about what you think; I just want to have some facts, very simple and brief.

THE COURT: I think you meant to add, or didn't you, Mr. Ernst, to that last question "who come from outside Jersey City and do not work in the plant," or don't you?

Q. That is what you meant and I meant. Right?

A. Yes.

Q. Now, do you always allow people to picket outside of a plant or do you not at times make them picket a block away?

A. Oh, no, right in front of the plant, Mr. Ernst. From time to time we communicate, the police officer in charge is always communicating with the head of that group, and asking if there are any objections, are there any complaints or any criticism so that he can convey to his superior that there is a feeling of discontent that they are not being treated fairly. We never have any trouble with strikes.

Q. The evidence will show that. Do you allow picketing in front of a plant for the purpose of organizing the workers in the plant—by that I mean to induce the workers to join a particular union?

A. No, we do not allow that because we feel they are intruders.

Q. Have you ever read the National Labor Relations Act?

A. No. The Wagner Act?

Q. The Wagner Act?

A. No, other than——

Q. Have you ever gotten an opinion——

MR. HERSHENSTEIN: He hasn't finished.

A. (Continuing.) —other than has been in the papers from time to time; I see various phases of it discussed by various judges and boards, that's all.

THE COURT: We will adjourn now for ten minutes.

(A ten-minute recess was here taken.)

Q. Mayor, may people strike and picket for a closed shop?

A. No, we have none of that.

Q. Who decides in each case whether or not the people may picket, that is, whether it is a closed shop strike or an organizational strike or not, who decides that?

A. Generally the delegates of the union do their negotiating themselves with the various shops and various industries. They never create or never endeavor to present themselves publicly on the street to threaten or to urge by force the joining of their union, they have no trouble with our city in that respect; I haven't seen any, any closed shops where there is no strike, where there is no labor controversies, for anyone to present themselves and to picket for that purpose to force them into the union. We have never had that.

MR. ERNST: Now, will the stenographer please read my question to the Mayor.

(Question repeated as follows:

"Who decides in each case whether or not the people may picket, that is, whether it is a closed shop strike or an organizational strike or not, who decides that?")

A. Well, we have made it a rule because of our state law, there is a Court of Errors and Appeals case recently, that where there is no strike picketing is prohibited.

Q. Mayor, I am going to ask the secretary to read it once more to the Mayor. If it isn't clear I will make it clear.

(Question re-read by the reporter.)

A. The police authorities because it is unlawful.

Q. The police authorities. When you say the police authorities is that the policeman on the beat?

A. The Chief of Police.

Q. So in each case, Mayor, the Chief of Police decides whether or not a picket line may be on the street?

A. That is naturally, if the case is brought before him by the plaintiff or by the operator of the plant, and then he immediately steps into the picture and it is his duty.

Q. Now, in the first instance, however, the policeman on the beat may break up the picket line if he thinks it is an organizational picket line or a picket line for a closed shop or any one of the picket lines that you think is illegal?

MR. MATTHEWS: He hasn't said that at all. He says the Police Chief after a complaint from people.

THE COURT: Put it in the form of a question. Maybe it was in the form of a question. It didn't sound quite like a question.

Q. There is a picket line in front of a factory, it is peaceful, there are just three men, a policeman comes along the street and he sees three men picketing in front of a factory, he has never seen them in front of that factory before; is it up to that policeman to decide whether or not that picket line is lawful or not?

A. No, the rules of the department, Counselor, is that that officer the moment he observes any strangers or any condition out of the ordinary, he makes his investigation and if he finds that they are in violation of the law he orders

them to move on and reports to his station just what happened.

Q. And if the policeman perchance disturb picket lines that are lawful that should be stopped, shouldn't it?

A. Well, they never interfere with picket lines that is lawful.

Q. Never do?

A. Not where there is a strike.

Q. But if by chance they make mistakes and interfere with lawful picket lines you would suggest in behalf of labor, of which you are a friend, that that practice should stop, is that right?

A. It doesn't exist, Counselor.

Q. It doesn't. But if it did exist you would want to stop it?

A. Well, we have to stop it.

Q. Now, in regard to the National Labor Relations Act, the Wagner Act, did you ever get an opinion from any of your counsel as to what rights that gave the workers in Jersey City?

A. No, we never had an occasion to call upon it.

Q. Do you know whether or not in that Act there are some rights given to the workers in respect to organizational activities that they didn't have before?

A. Activity?

Q. Organizational activities.

A. I understand that's the way the Act is drawn.

Q. And the workers have some additional rights. Now, in regard to the workers using placards, I want to ask you a series of questions all relating to placards. Do I understand from you that if the men on the picket line have circulars and hand them out without molestation to the workers coming out of the picketed plant, that is now lawful?

MR. MATTHEWS: Since the decision.

A. That was unlawful.

Q. Now lawful, I said.

A. Yes, yes.

Q. I also understand, do I not,—or let me put it this way: Do you agree with me that if a picket line is in existence and it is one of the picket lines that you believe lawful and the pickets then instead of having a circular on a small piece of paper have it printed on a big piece of paper, not cardboard, let's say 10 by 20, and just hold the paper in the air, that is unlawful?

A. As far as our ordinance is concerned, yes, sir.

Q. It doesn't make much sense, that distinction, does it?

A. No, it doesn't. They don't benefit anything by that. The strike is always handled from inside with the men on strike and the officials of the industry.

Q. Now, the men could take their circulars and have them sewn or pinned on the back of their shrits while they are walking up and down picketing and that would be lawful, would it?

A. Not under this ordinance.

Q. And have you been advised by your counsel that that ordinance is constitutional?

A. Well, of course, I don't feel that anybody could tell me that it is constitutional or unconstiutional because Mr. Hershenstein and Mr. O'Mara drew that ordinance and I have the utmost confidence in them as to their ability.

Q. Yes, but don't you think that in view of the United States Supreme Court decision in regard to the distribution of placards, which is another word for circulars, that there is a real doubt as to whether or not the position in Jersey City against placards on the picket line is at present the right position to take?

MR. MATTHEWS: Now, if your Honor please, he is not called upon to construe the opinion of the United States Supreme Court or the Wagner Act.

THE COURT: Are there any cases, Mr. Ernst—I meant to ask this the other day—are there any cases passing on the right of pickets to have placards?

THE WITNESS: Yes, in the Massachusetts case.

MR. ERNST: In most of the jurisdictions, your Honor——

THE WITNESS: The Massachusetts case clearly covers that in the United States Supreme Court.

MR. ERNST: In most of the jurisdictions with which I am familiar the courts have held that the pickets may carry placards and the law, as I understand it, does not go into the question of what is on the placard. I would like to ask the Mayor one or two questions, if I may, on that.

THE COURT: What is it in reference to, the Massachusetts case, Mr. Hamill, do you know, that the Mayor speaks of?

MR. HAMILL: Our Courts of Chancery, your Honor please, have observed that ordinance.

THE COURT: Do you know the name of it?

THE WITNESS: Mr. Hershenstein and Mr. O'Mara have got that Massachusetts case.

THE COURT: What is the name of it?

MR. HERSHENSTEIN: I can give it to you in the morning; it is cited in the Fifth Avenue Bus case of New York City.

MR. ERNST: The Davis case is a case involving the right of public assemblage, of which the citation—I don't believe it has any reference whatsoever to placards but I can give you the citation in a moment—Davis v. Massachusetts, 167 U. S. 43, decided by the United States Supreme Court by Mr. Justice White in 1897. I don't recall any reference there to placards whatsoever.

Q. May I ask you this in regard to the placard carrying, does it make a difference in your mind as to what is written on the placard?

A. No; of course, we have always maintained, Counselor, that the carrying of placards is very injurious to a man's business and that for them to assemble in front of a business house, for instance, a store, passing up and down in front, it destroys the man's business, so we endeavor to try to adjust that, that his business wouldn't be destroyed, because of some little dispute.

Q. Now, you would make a distinction in a retail business and a manufacturing business maybe, wouldn't you, you wouldn't destroy the manufacturer's business?

A. No, I don't think we could make a distinction in either.

Q. Wouldn't allow it at either?

A. I think not.

Q. Now, there were placards used at the celebrations in Veteran Square, Journal Square?

A. Well, I wouldn't call them placards; those are transparencies carried by these various civic groups, Counselor; I wouldn't call them placards.

Q. Well, now, would you allow people on a picket line to carry a transparency?

A. No, there is no comparison, Counselor.

Q. Your answer is no, you wouldn't let them?

A. Well, no, no—yes, that is my answer, but there is no comparison.

Q. You wouldn't let them carry them and you don't issue permits to the civic groups, as you call them, to carry the placards, do you?

A. No. Where there is a public demonstration or there is parades permission is granted for parades, they are privileged to conduct their parade and their demonstration as they see fit. As a rule there is nothing undesirable about it. We have never found any.

Q. Mayor, I was impressed by what I think is your genuine resentment against the sweatshop conditions, to which allusion was made. Now I ask you what if those sweated girls picketed up and down in front of that plant, do you still think you should deny them the right of carry-

ing a placard saying "This factory is on strike because of sweatshop conditions?"

A. We should go further, counsel, I don't agree with that, but we should go further and drive them out, we should close them.

Q. Now, Mayor, let's see. Who is to do the driving out and how would you drive them out?

A. Well, now, I communicated with the American Federation of Labor of which my counsel has my letter——

Q. It is in the record, no answer.

A. (Continuing.) —and I endeavored to try to see if we couldn't enact some state law or some ordinance that would cure that condition under some health regulation of some character. I even went further, I sent for the Commissioner of Labor and I discussed with him whether or not he could not close sweatshops and drive them out of our state, and from his record he has done quite a little of that.

Q. Mayor——

A. They are very undesirable.

Q. They are to the city and everybody.

A. Everybody.

Q. Now, Mayor, don't you think that the working people themselves by gathering together in unions can be of some aid in boosting these low wages?

A. Yes, they have been, they have done considerable good; I don't oppose that, Counselor.

Q. Isn't one of their implements in aid of your position to drive out the sweatshop people, the conducting of picket lines and getting a strong union?

A. No, I think that the greatest remedy for that is simply let the authorities learn in some manner lawfully and closing those shops. Now, I welcome today, and I am not responsible for these various small groups moving into Jersey City—I doubt whether there is any number of them there, maybe a few, and they locate on the waterfront where we can't get at them. Now, our stores, we don't allow any of our stores to be utilized for that because we have supervision over that by our health ordinance because

they haven't got the necessary facilities for the housing of these people. There we drive them out in that respect. Now we take a tenement house, they go up on a floor, we drive them out of there because the facilities is not there for the housing of those shops, because they want to house fifty or sixty or a hundred people and we don't allow that.

Q. Mayor, don't you really think that you could do a swell job driving out the sweatshops if you allowed these sweatshop girls to have picket lines in order to organize the shops even though the shops are not organized now?

A. That would lead to disturbance, Counselor, they would not accomplish it. I even went so far as to write to some man in New York at the head,—he has had considerable trouble, he is the head of that union,—and I asked him would he supply me with any data that he possibly had in his controversy to eliminate sweatshops and he sent me over some memorandums but we wasn't successful in getting that together.

Q. Do you know the name of the man?

A. Counselor Hershenstein was the man drawing the ordinance for me. We have endeavored for the last two years, we started a battle on those sweatshops, Mr. Greer, who is the City Comptroller, who has supervision of this publicity campaign, has always impressed on every man that has ever entered Jersey City in his efforts to locate "We don't want you if you are a sweatshop and if you don't pay the proper wages, if your working conditions is not proper, get out, we don't want you, don't look for any protection from us."

Q. It is a tough job though.

A. It is a tough job to keep them out because they are squirming in in every direction on you.

Q. Now, Mayor, you said that if you allowed these sweated girls of Jersey City to have a picket line for the purpose of organizing a shop that is not organized you were afraid, as I recall your words, there would be disturbance or disorder?

A. Well, it would open up the door, Counselor.

Q. Will you explain to me what kind of disturbance or disorder you mean?

A. Well, it would open up the door that it would have to be permissible to every other industry and every other line because if you grant to any particular set of people the right to picket and the right to mass picket in order to cure one evil you are going to create another. That is what we are disturbed about, and I want to say to you for the benefit of those who is opposed to sweatshops, I would like to get some state law, if anybody can draw one, that will stand the test of our courts, I would like to get that through.

Q. Now, until you get through a state law that stands up in court these girls are going to be sweated and there is no possibility of having the strength of a trade union have the impact on a boss to raise the wage.

A. Counsel, I won't agree with you that they are in Jersey City; they are not.

Q. You don't believe there are any in Jersey City?

A. Maybe two or three. I say to you if you are so anxious to cure it why don't you cure that in New York?

Q. Well, now, maybe we are trying to do things with it in New York also.

A. Well, I say if you had as few in New York as we have you wouldn't consider it, but I am opposed to it. I would go further than picketing; if they complain to me I will go further than picketing.

Q. What would you do besides picketing?

A. Do anything that is possible to force out of that city the undesirable shops that is forcing people to work for starvation wages.

Q. Now, you will go further than picketing but you won't allow the picketing.

A. Well, the picketing doesn't accomplish nothing, Counselor.

Q. Now, let me ask you this, Mayor. You are afraid if you allowed picketing to organize these sweatshops there would be disorder.

A. It is unlawful, Counselor.

Q. No, you said before something about disorder or disturbance.

A. It is unlawful; we have no right to do that.

MR. MATTHEWS: I was waiting for him to say that.

A. If you will get an opinion only a week ago you will find it is unlawful.

Q. Just stick to the one thing, the disturbance, and we will come to the unlawful later.

A. Why discuss with me something I have no power over or no control?

Q. Because you used the word, Mayor.

A. I didn't use it, you used it. You continued to interrogate me along those lines and if you will examine this act, Counselor, I have no power under the law to do this.

MR. ERNST: The secretary will kindly look back to the point where the Mayor said that if he allowed picketing there would be disorder, that is, picketing of the sweatshops for organizational purposes.

MR. MATTHEWS: He doesn't dispute that he said that, but he is also saying he cannot do it under the law.

A. You asked about picketing where there is no strike, Counselor.

MR. ERNST: I would like the stenographer to read back that question and answer because I want to ask you what disorder you fear. It will take a few minutes to get it, but let's have it read.

(The reporter reread the question as follows:

"Now, Mayor, you said that if you allowed these sweated girls of Jersey City to have a picket line for the purpose of organizing a shop that is not organized you were afraid, as I recall your words, there would be disturbance or disorder.")

Q. You mentioned the word "disorder," Mayor. Will you kindly tell me what kind of disorder you would fear if that kind of picketing of sweatshops were permitted?

A. In the first place, Counselor, why should you and I discuss something that I have no power or control over? Further, I want to refer you again to a recent act of the Court of Appeals that denies the right to allow anybody to picket where there is no labor dispute.

Q. We will come to that in a moment.

A. No, no, we won't come to it. Why discuss it with me, Counselor, and try to put me on record on some question we have no legal right?

Q. We will get to the legal right in a minute. You mentioned the word "disorder."

A. I am mentioning legal rights too.

Q. Now I want you to tell me what you mean by disorder. I will tell you frankly that under the National Labor Relations Act there is no case in the State court that will cover all the situations.

MR. MATTHEWS: I will tell you there is.

THE COURT: All the situations defined in the Act.

MR. MATTHEWS: I will tell you there is, so you follow me.

Q. Now, what is the disorder that you fear if you allowed the sweatshop girls to picket, what kind of disorder?

A. I have no hesitancy in discussing these questions with you.

Q. Let's have it.

A. Because I am familiar with them, been handling them for years, the disorder from picketing. In the first place we have no right to picket; second, if we grant any picketing, particularly where it is unlawful, we must grant them in every other section of our city, which finally winds up in disorder. That is exactly what I refer to. Where one place may not develop disorder the other would.

Q. Now, disorder means what?

A. Nuisances, nuisances.

Q. You mean that the people on the streets cannot go by the picket line?

A. Yes, and they attract crowds and it gets noisy and it gets a little troublesome.

Q. But picket lines are allowed for many purposes, aren't they?

A. In some States and some cities.

Q. In Jersey City?

A. They are allowed there, yes.

Q. So that you have some of that disturbance in certain picket lines and just don't want more of it?

A. No, we won't have any disturbance, Counselor.

Q. Then I don't understand you, honestly.

MR. MATTHEWS: He can't help that.

A. As I discussed with you, we adjust all our affairs and we decide that two or three men is to picket the entrance to the building and two or three on the side and two or three in the back and we never have disturbances with two or three men, we never have disturbances only where there is a dozen or two or three dozen or fifty or sixty wants to mass picket.

Q. So if you state to these sweatshop girls "You can picket, two or three or a half dozen," you wouldn't expect any disturbance, would you?

A. Not necessarily, but it is unlawful.

Q. And if it were lawful you would be in favor of it?

A. Well, I think I would go further than that.

Q. No, let's just go that far first.

A. Well, I would go further, I would try to inject the authorities of Jersey City in to cure it.

Q. Would you go that far as to allow picketing if it were lawful?

A. If it was lawful?

Q. You would be in favor of it?

A. Why, certainly, anything that has been effective to an individual worker.

Q. So if the law were changed you would be delighted on that subject, on picketing the sweatshops?

A. Are you discussing now, Counselor, when you refer to the sweatshop, are you referring to the place of business that has no labor dispute and no strike?

Q. That's right.

A. And that you think it is lawful for them to walk up there and picket that place of business that haven't any labor disputes or labor difficulties?

Q. That's right, Mayor.

A. Is that in your opinion lawful?

Q. That's right, Mayor.

A. Is lawful?

MR. MATTHEWS: No, your counsel advises you contrarily, it is not.

Q. Now, Mayor, let's not argue between us what is legal.

A. I can't argue law with you; I am not trying to.

Q. No, let's put it this way: The purpose of picketing is to persuade people, isn't it?

A. Yes.

Q. The result of peaceful picketing is to persuade some human beings who are picketed to take a certain position in their own minds with respect to joining an organization, right?

A. Right.

Q. As long as there is no violence and it is peaceful what objection have you got to peaceful picketing to persuade?

Q. That has never confronted the City of Jersey City yet, as long as I have been in control, and the head of the city government. In the first place, what you are discussing today, Counselor, the sweatshop is located on the riverfront, it is on railroad property. There is no——

Q. That's right.

A. There is no picketing allowed there and there will be no picketing permitted there because it is on private property, and the result is that we will never be confronted with that. I told you that we do not permit sweatshops in homes or places of business, stores, vacant stores, and that is the only possible chance that we would ever be confronted with sweatshops, and the result is that we have never been confronted with one yet. You are referring to those that has been located from Brooklyn there and they are on private property. We have no jurisdiction over that property, so we cannot remedy it by discussing it here, but that is the case.

Q. No, but this is true, isn't it, Mayor, that when the people come off the private property they get into your public highways?

A. On the streets.

Q. On the streets?

A. Yes.

Q. And then at that point you can regulate the right to picket?

A. No.

Q. So as to approach them when they come off the private property?

A. These properties is different, Counsellor. They go from there on to the ferry boats.

Q. Yes.

A. You see?

Q. And they cross the public street, don't they?

A. No, no; no, they never leave——

Q. All private property?

A. They never leave it.

Q. Now, if they are not going on a ferry boat and they live in Jersey City——

A. They don't live in Jersey City.

Q. None of them do?

A. None of them.

MR. ERNST: Didn't they testify they did?

THE WITNESS: Not to my knowledge. They all come from Brooklyn and New York.

(Counsel conferred aside.)

Q. Mayor, I am advised that three or four girls, maybe some more, testified as to sweat shop conditions in Jersey City, and all of them gave their addresses as living in Jersey City, is that right?

MR. MATTHEWS: At the time that they were on the stand, but not at the time that they were working in the sweat shops.

MR. FRAZER: I think there is some confusion there, because the plants, a number of the plants we spoke about, were not in the Harborside Building; they were on some other street, the name of which I now forget.

MR. MATTHEWS: There was one on Orient Street, Spaulding, that I remember.

MR. FRAZER: Somewhere in the harbor side.

Q. Let me end this subject; it isn't worth much more time at the moment. As I understand it, even where there are sweat shop conditions in a factory, you are opposed to allowing union organizers to picket in order to induce the sweat shop girls to join the union?

MR. MATTHEWS: I object to that question, if your Honor please.

A. No——

MR. MATTHEWS: He has already said that the law won't allow it. Now why can't he be opposed to the law?

THE COURT: I don't know whether it is quite the same question.

A. Why can't this apply to every business, as well as a sweatshop?

Q. Yes. Well, is it all businesses?

A. Well, wouldn't that apply to every business?

Q. That's right. I meant even where it is a sweat shop.

A. No, I say wouldn't that apply to every business?

Q. Yes, I think it should.

A. Then we are opposed to that.

Q. We are opposed to each other on that?

A. Because I think that any business that has no labor troubles or labor disputes should not be allowed to be driven out of business because of some racketeering groups, and you know what I mean by that, Counselor; you have had vast experience in New York on that; that is, at least you have learned of it, about the racket that's been going on for so many years all over the country about this mass picketing and adjusting their affairs. I don't want any of that in Jersey City.

Q. Mayor, do you know Hugh A. Kelly pretty well?

A. I beg your pardon?

Q. Do you know Hugh A. Kelly?

A. The secretary of the Governor?

Q. The Governor.

A. Yes, very well.

Q. You know him pretty well?

A. Very well.

Q. And you know with some intimacy——

A. What?

Q. You knew with some degree of intimacy the people whose names were read to you by Mr. Spaulding Frazer?

A. Not them all. I know some of them.

Q. You know some of them?

A. Hugh Kelly, I am very, very well acquainted with.

Q. You know most of the people who were at the Armory meeting where you spoke, sitting on the platform with you?

A. Oh, yes.

Q. You know most of the people sitting at the head table at the Chamber of Commerce meeting?

A. Yes, sir.

Q. You knew practically all of the people who spoke at those various meetings and rallies?

A. Yes, sir.

Q. Right? In your opinion are they law abiding citizens?

A. Yes, sir.

Q. You have never known any one of them, have you, to go out with a brickbat or a gun or commit an act of violence or disorder?

A. (No answer.)

Q. What?

A. You are joking, ain't you?

Q. No, it is out of the question, isn't it?

A. No, no; I never knew that.

Q. Of course. Not a one of them. Now, Mayor, Mr. Casey indicated in his testimony that the rejection of the applications for speaker's permits was due to the fear of disorder?

A. The fear——

Q. Of disorder?

A. (The witness nodded.)

Q. Is that right? There was no reason to fear disorder from those people whom I just referred to as sitting at the various speakers' tables and platforms?

A. No.

MR. MATTHEWS: That isn't what he testified. Those are not the ones that he testified he feared disorder from. It was Roger Baldwin and you and the rest.

MR. ERNST: I didn't say he did; I didn't say he did.

MR. MATTHEWS: All right.

MR. ERNST: The mayor can take care of himself, without prompting.

MR. MATTHEWS: He has done it pretty well.

MR. ERNST: Plenty, without prompting.

Q. Mayor——

MR. ERNST: Will you repeat my question for the mayor? I think he just shook his head.

(Pending question and answer read by the reporter.)

Q. Now those people have pretty wide influence among their own groups, haven't they, the veterans and the church groups and the others that came out?

A. Yes, sir.

Q. Is that right? They are more or less the leaders of public opinion in Jersey City?

A. Yes, sir.

Q. You called them such yourself, didn't you?

A. Yes, sir.

Q. Do you think they are really leaders, or did you just call them that?

A. Well, of course I look upon them from their positions and their wide acquaintances that they are leaders in their respective groups. They are outstanding, very outstanding.

Q. Now if, for example, Senator Borah had come in during either the months of November or December or January and had been granted a permit to speak on any street corner in Jersey City, do you fear that Hugh Kelly and the rest of those men would have created a disorder?

MR. MATTHEWS: I object, if your Honor please. Hugh Kelly has created no disorder.

MR. ERNST: I didn't say he had.

THE COURT: I don't think you quite understood the question.

MR. MATTHEWS: Well, I understand that that question is totally irrelevant to this issue. If Mr. Borah

came in under your auspices, which of course is contrary to even possibility, that would be a different proposition.

MR. ERNST: Will you repeat my question, please?

MR. MATTHEWS: I object to the question, please.

(Pending question read by the reporter.)

MR. MATTHEWS: Created a disorder—that's what I say. Hugh Kelly was not accused of creating any disorder.

THE COURT: Well, it bears on the issue, at least to my view, of whether there is a fear of disorder at public meetings.

MR. MATTHEWS: But he says—that question asks whether Hugh Kelly would create disorder.

THE COURT: As a result of Senator Borah's being there.

MR. MATTHEWS: Well, Hugh Kelly didn't create any disorder at any time.

MR. ERNST: I didn't say he did.

MR. MATTHEWS: And what is the sense of the question?

MR. ERNST: I don't think he would have, if I may tip off the mayor.

THE COURT: You may answer.

THE WITNESS: I don't think he would have created any disorder.

MR. MATTHEWS: That isn't tipping off the mayor. That's rendering yourself ridiculous.

THE COURT: Do you want the question read again, Mayor?

Q. Do you want to have it read again?

A. No, you asked me whether or not if Senator Borah had been granted permission, that the veterans and the various civic bodies would object? No, sir.

Q. They would not have?

A. No, sir.

Q. And there would have been no disorder on their part?

A. No, no. We would welcome Senator Borah there. We think that he is a high-class man, a high-class public official.

Q. Would you let Borah speak there if the application were filed by the American Civil Liberties Union?

A. Now of course we would first have to confront the Senator with the conditions and make known to him just exactly what the feeling of the people was against the group that was tendering him this invitation.

Q. That's right.

A. And if the Senator then thought that after he was acquainted with the conditions, Counselor—I don't think the Senator would accept it.

Q. But if he did accept, you would give him plenty of police protection?

A. If he accepted, we would be duty bound to protect him, but I don't think that the Senator would accept.

Q. And you have got a police department of about a thousand people?

A. Something in that neighborhood.

Q. And it would be ample to protect him?

A. (The witness nods.)

Q. And you don't think for a moment that Senator Borah would create a disturbance by what he said?

A. No, he is very——

Q. And you don't think he would come there with any kind of a pop gun?

A. No.

Q. Or an instrument of violence?

A. (No answer.)

Q. Right?

A. No, the Senator is—he is a distinguished statesman.

Q. That's right. Now, Mayor, if the Senator applies for a permit, as he did—I will withdraw the question.

Do you think that there would be a disturbance which you could not control——

A. Counselor, will you let me interrupt you? You said as he did, and then withdrew the question.

Q. Yes, I withdrew the question.

A. Well, he never did.

Q. That's right.

A. You see, you create an impression that he did.

Q. No, I withdrew that.

A. No, he did not.

Q. If the Whig Society of Princeton——

MR. MATTHEWS: The what?

Q. (Continuing.) The Whig, Cliosophic Society of Princeton University, had been granted a permit to put Senator Borah on a street corner to speak in Jersey City, and if Senator Borah had consented to speak and if the permit had been granted, would there have been such disorder that you could not have controlled it with your police?

MR. MATTHEWS: Oh, I object, if your Honor please. That's calling for a conclusion about something he can't even estimate.

THE COURT: I understood that it is the contention of the city authorities that they can estimate it. I might even say that they do——

MR. MATTHEWS: No, his contention was if his gang, the Civil Liberties Union, whose reputation in the Fish Committee is that of Communists—if they applied for Senator Borah, he would acquaint Senator Borah with the kind of cattle they are. Now, this Cliosophic Society, he would acquaint Senator Borah with them.

We don't know what they are. The only thing we have about that is that they hung placards out the window commending Mayor Hague down at Princeton, and Thomas could hardly get a hearing.

MR. ERNST: May I ask the mayor to answer my question?

THE COURT: Yes, go ahead. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

THE COURT: Do you want the question read?

THE WITNESS: Yes. Will you read it, please?

(Pending question read by the reporter.)

MR. MATTHEWS: I answer that, that Senator Borah is being pictured here as a man who would create disorder; Senator Borah would——

THE COURT: No, I don't think that's true. I think it is just the opposite.

MR. ERNST: My position is——

MR. MATTHEWS: Why would it be the opposite? Let's have the question. He said if Borah spoke under their auspices, would they be able to quell any disorder?

Now, where would the disorder come from? The Whig Society?

MR. ERNST: That's just what we are going to find out. I can't find it out so far. I would like an answer to the question.

MR. MATTHEWS: It is so nebulous.

MR. MATTHEWS: Do you want it read again?

A. If the Senator accepted an invitation—in the first place, I think it would be rather difficult for that society to get permission from the city officials.

Q. Why, Mayor?

A. Because of their reputation, that if their reputation was tainted with radicalism and Communism, and that their purpose was a purpose of disorder, of course it would be possibly, in the first place, difficult to get the permit. Now——

Q. Which society are you talking about? Are you talking about the same one I am?

A. I am talking about this group in Princeton.

Q. Yes.

A. That had Norman Thomas there.

Q. That's right.

MR. MATTHEWS: You mean Princeton University?

THE WITNESS: Yes.

Q. Now, do I understand——

A. That don't apply to the entire university, Counselor.

Q. That's right.

A. That's only a handful of boys that got together.

Q. That's right. Now the record shows, and they are looking it up, that the Whig Cliosophic Society of Princeton University applied for a permit for Senator Borah to speak in Jersey City.

A. Did they?

Q. They did.

A. And was it denied?

Q. And it was denied on the ground that there would be murder, bloodshed and disorder and violence.

A. Well, I question that.

Q. You question it?

A. I say I question the application, and I question whether Senator Borah had consented to talk——

THE COURT: It was a telegram, wasn't it?

MR. ERNST: What is that?

THE COURT: It was a telegram.

MR. MATTHEWS: Senator Borah wasn't a guest at that meeting.

THE WITNESS: Yes, I don't think that officially got before us.

MR. MATTHEWS: No.

Q. Now, it got before you, Mayor, to the extent that the Director of the Department of Public Safety wrote to John Harlin Cleveland, of the American Whig Cliosophic Society, Princeton, New Jersey, as follows:

"I have your telegram in which you request a permit, I assume for an outdoor meeting, to be sponsored by your society for Thursday evening May 12, 1938 at nine p. m. at Journal Square, Jersey City"——

Continuing to read the letter:

"I have made an investigation of the facts and circumstances pertinent to this application and believe it to be proper to refuse the issuance thereof. Your request for a permit, therefore, is denied."

Now, I am going to interpolate something. It is not on the ground that it is Journal Square, the center of town; it is not on the ground of the time; it is not on the ground that Senator Borah had not consented. I am now going to continue to quote:

"Denied on the ground that said meeting would tend to create disturbance and disorderly assemblage. Yours truly, Director."

Do you approve of that position? (Showing to the witness.)

A. No, no, I don't wish to see it, Counselor. It is perfectly all right.

Q. Do you approve of that?

A. In the first place, the telegram is not sincere. It is just in my estimation the same as I have received hundreds of them, just a joke. In the first place, that's no way to make an application for a permit as important as that.

Q. Mayor, you know——

A. And if I had seen the telegram, I would advise the Commissioner not to answer it.

Q. And you would reject the application because it is in telegram form and not in letter form?

A. Right; and I would first then communicate with the Senator and ask the Senator was he aware of just exactly the conditions surrounding this application.

Q. Yes. Now, Mayor, you know, don't you, that many applications are made for street corner permits to Mr. Casey where the applications are made over the telephone?

A. True.

Q. And verbally?

A. True. That's prior to this disturbance, Counselor.

Q. It is prior to this?

A. Yes, yes.

Q. Now, since this disturbance, your whole rules of practice have changed, isn't that right?

A. Well, necessarily——

Q. Just have they changed?

A. They have changed.

Q. They have changed. Now, at the moment, as I understand it, the Whig Cliosophic Society is undesirable, is that right?

A. Well, no, I am not going to be—I am not going on record as saying that.

Q. Well,——

A. I am going to say——

Q. But Mr. Casey——

A. I am going to say that the group that set themselves up in Princeton were not sincere, that they were only just doing it because somebody had prevailed upon them to inject themselves into this controversy. Now, why did they select this particular time, Counselor, to inject themselves into Jersey City? They never done it before.

Q. Do you want me to tell you why?

A. No—yes.

Q. The reason, as I understand it, Mayor, is that whereas you have been disturbed about an unfriendly press, and you thought the press might create disturbance in your town, these boys and a great part of the people in this nation, think you have been badly advised; they think that you are denying civil liberties; they think you should open up Hyde Parks, allow American citizens to speak, and I have in my office, and will be glad to show them to you, not one or a hundred but literally thousands of letters, saying, "I hope we can restore civil liberties in Jersey City."

MR. MATTHEWS: Now, just a minute.

Q. (Continuing.) And these Princeton boys that had three or four meetings previous——

A. Where?

Q. Your son may have been a member of the society at Princeton for all I know. Do you know whether he was?

A. I don't think so.

MR. ERNST: Does anybody here know?

Q. It is not unlikely?

A. No.

Q. This is an old and respectable, conservative society in Princeton.

A. Well, they don't go in for this type of disturbance, Counselor.

Q. There is plenty of it though?

A. Oh, plenty of it.

MR. MATTHEWS: Just a minute, Mayor. May I address the Court?

This, of course, speech, in telling the Mayor why this group of kids down at Princeton pulled this stuff is not true; and moreover, when he is talking about the letters in his office, why, I am only one of the lawyers, and I am inundated with letters and telegrams from people, saying, "Would to God that there were more men in the country like Mayor Hague to take the battle-front against you Communists."

MR. ERNST: Me?

MR. MATTHEWS: You, yes, sir; you. And here you are branded as such (indicating); right here.

Q. I have got one other question; I have got one other question, Mayor, before we close.

MR. MATTHEWS: I will show it to you later.

Q. I want to read to you what I think is a segment of public opinion today for a good portion of America——

A. Of what?

Q. Of a good portion of the American people, and after I have read it I will ask a question, and I suggest that you not answer it until you see Mr. Matthews' signal.

MR. MATTHEWS: Tell him where you are reading it from.

MR. ERNST: I am going to, sir.

MR. MATTHEWS: All right.

Q. It is an editorial from the "New York Times"——

MR. MATTHEWS: Oh, boy!

Q. (Continuing.) — of June 15, 1938. It reads as follows; the caption is in quotes:

"No free speech issue."

It is very short, your Honor.

THE COURT: Go ahead.

Q. (Continuing.) I am quoting now:

"The lines of Mayor Hague's defense of his course in Jersey City are clear. Free speech? Certainly. But not for Communists. Communists have no right that anyone is bound to respect. What is a Communist? That's easy. Anyone who associates with other Communists. A Communist is any official of the C.I.O. (except John L. Lewis). A Communist is Norman

Thomas, the Socialist; a Communist is Morris Ernst, Roger Baldwin, Congressman Bernard, the Farmer-Laborite from Minnesota, Jerry O'Connell, the Democratic congressman from Montana. A Communist in short is anyone that Mayor Hague is determined not to permit to talk in Jersey City. He will not permit such people to speak for two reasons: first, because they are Communists (see above); and second because they must be rushed out of town to protect them against an aroused citizenry. And who arouses the citizenry against them? But we need not pursue this course of reasoning farther."

MR. MATTHEWS: Reasoning?

Q. (Continuing.) "If Mr. Hague's logic were allowed to prevail, there will be just as much free speech in this country as local bosses are inclined to permit, and no more."

The question I wish to ask you is this. Before the question——

MR. ERNST: I have warned him not to answer.

MR. MATTHEWS: He never pays any attention to you.

MR. ERNST: He doesn't?

MR. MATTHEWS: No, no, no.

Q. Mayor, I just want to ask you this one question: Don't you think in the light of that reasoning of a sober, conservative paper, that you are probably creating radicalism in Jersey City by trying to throttle the rights of free speech and public assembly?

MR. MATTHEWS: Have you finished?

Q. (Continuing.) Don't you think you are throttling the rights of free speech and public assemblage?

MR. MATTHEWS: Mr. Mayor, I want to object, first of all, before you do answer that question—first of all

there is a gratuitous assumption in that question that there is reasoning in the article. Whoever wrote that had constipation of thought and a corresponding antithetic disease of words.

A. I read it this morning, and I thought Morris had a hand in it.

MR. MATTHEWS: Sure, and I therefore say that constipation of thought would be a good characterization of it, and the antithetic disease of words. You get me.

Now, I object, your Honor, to that question, because it asks the Mayor to characterize an editorial written in what he has called a conservative and sober paper. I have read editorials in the "New York Times" of the CIO which would make you think that there wasn't a one in them that wasn't a Communist. Now, why should the Mayor be called upon to characterize it? Unless he would like to.

MR. ERNST: I didn't ask him——

MR. MATTHEWS: And if you would like to, Mayor, you may, but——

MR. ERNST: If your Honor please, I didn't ask him to characterize the editorial at all.

MR. MATTHEWS: Well, that's what it is. You call it reasoning.

MR. ERNST: No, no; follow me a minute.

A. If Morris Ernst was to produce the various stories in magazines and editorials against me that he had his finger in, they would fill that table.

MR. MATTHEWS: I see.

Q. You flatter me, Mayor.

A. No, I don't.

MR. MATTHEWS: Flatten, you mean, not flatter.

Q. If I had——

A. I don't flatter you.

Q. If I had done it I would be proud, sir.

A. No, I don't flatter you.

Q. Now will you answer my question?

MR. MATTHEWS: Do you want to answer it? He says no, he is not going to characterize it. I object to that question.

Q. In the light of that editorial, isn't it possible that you are fomenting radicalism by not allowing people the outlets of free speech, public assemblage, in Jersey City?

A. We won't allow——

MR. MATTHEWS: No, I object as irrelevant to this issue.

THE COURT: Do you want to ask your client if he wants to answer it?

MR. MATTHEWS: No, I order him not to answer it, with your permission, and he obeys my order.

MR. ERNST: Out of deference to the plaintive mandate of counsel, I withdraw the question.

THE WITNESS: Well, I would prefer to leave the question.

MR. MATTHEWS: It is withdrawn, it is withdrawn, Mayor.

THE COURT: You can argue it out later.

Ten-thirty in the morning.

MR. MATTHEWS: All right.

(At this point an adjournment was taken to Thursday, February 16, 1938, at 10:30 A. M.)

Thursday, February 16, 1938.

Case continued.

Appearances as before.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Resumed).

By MR. ERNST:

Q. Mayor, in coming to your conclusions as to whether people are desirables or whether they would offend the city, you rely to a considerable extent upon the public press?

A. Well, the public press—of course, a man in public life, Counselor, has got contacts and hears things possibly where a man in private business wouldn't hear, that is, on public questions; I have that means of ascertaining.

Q. I didn't ask you that, I just asked do you rely to a considerable extent on the press.

A. Yes.

Q. And the answer is yes. You don't believe everything you read in the press, do you?

A. Well, it depends upon who writes it.

Q. Who writes it. Now——

A. If it was the New York *Post*, no.

Q. If it is in the *Post*, no.

A. No.

Q. How about the Hudson *Dispatch*?

A. Well, that's—they have pr[illegible]y good writers there.

Q. Pretty good writers. Do you know Haddon Ivins of the Hudson *Dispatch*?

A. Why, he is one of my best friends.

Q. Yes.

A. A very capable newspaper man.

Q. What is his relation to the Hudson *Dispatch*?

A. He is the managing editor, isn't he?

Q. Does he hold a state job, or city job, or county job?

A. Yes, he is librarian; makes a very good one, too.

Q. Yes. What about the Jersey *Journal*? Is that a paper that by and large you would think is pretty good writers, as you say?

A. Well, that's a Republican paper.

Q. Well, it might still be good writers, might it not, Mayor?

A. Well, it is a very consistent paper. It has been in our city for a great number of years, fifteen or sixteen years.

Q. And it is a reliable paper, is it?

A. Yes.

Q. Your answer is yes. It is owned by the Dears, isn't it?

A. Judge Dear is——

Q. Judge Dear; all right. And what position does Judge Dear hold in the payroll of the city, state or county?

A. He is a member of the Court of Appeals and has been such a great number of years.

Q. Do you know a man named John Rickett of the Jersey *Journal*?

A. Yes, sir.

Q. A reporter on the Jersey *Journal*?

A. Yes; a very good one.

Q. A very good one. Do you know if his wife holds a job on the payrolls of the city, state or county? Just do you know if she holds a job?

A. I don't know.

Q. You don't know?

A. I couldn't answer that.

Q. Don't you know that his wife holds a $3500——

A. She doesn't hold one with the city, I know that. You said state or county.

Q. Yes.

A. She may be in the state, I don't know.

Q. Do you know whether she holds a $3500 job as a special investigator connected with the criminal courts?

A. No.

Q. Could you find that out for me at the recess?

A. Does the record show that?

Q. I don't know, I am asking, could you find that out for me at the recess?

A. What branch of the government?

Q. Special investigator to the criminal courts.

A. I would be glad to. Hudson County?

Q. I don't know, just somewhere, I think in Hudson County.

A. In our county?

Q. Yes. Now, Mayor, the *Observer* is a pretty reliable sort of paper from your point of view, isn't it?

A. Yes.

Q. Does the *Observer* hold the contracts for printing of public documents of any kind such as ballots?

A. They run an independent printing concern. Of course, they bid on all types of printing; if they obtain contracts, it is because of competitive bidding.

Q. And do they print the ballots?

A. Frequently, yes.

Q. Mayor, you are quite proud of your record in maintaining peace and security for property in Jersey City, aren't you? The record is pretty good?

A. We have been very successful, Counselor.

Q. That is, your success is indicated by the fact that there are few assaults and murders and burglaries?

A. Yes.

Q. Mayor, do you know what the FBI is?

A. The what?

Q. FBI.

A. What is the FBI?

Q. Well, it is the Federal Bureau of Investigation connected with the Department of Justice.

A. Under Mr. Hoover, yes.

Q. Yes; you know about it. Don't you know that the FBI collates, prints, publishes and distributes records from cities throughout the United States in regard to the facts relating to maintenance of peace and order?

A. Yes, sir; that is, it is not compulsory of their part, that is their system, that is to compile records for themselves.

Q. But you know they do print it?

A. They do that, as I say, to compile records for their own department; there is no law compels them to do that.

Q. That's right, but they do print them?

A. Yes.

Q. Don't you know that Jersey City is the only city in the United States whose records in regard to safety and the protection of property are not incorporated in Hoover's periodic reports to the American people?

A. No, no, no.

Q. Do you know that it is the only city?

A. We have—now I must be permitted to explain that.

Q. No, you can say whether you know if it is the only city.

A. No, now, that is unfair.

Q. Now, Mayor——

A. Now, there is no use you and I getting into a discussion. I want to explain why we withdrew from that.

Q. I will ask that later. I just want to know if you know you are the only city.

A. I do not know, not officially.

Q. Do you know whether or not the Jersey City figures on police protection and crime are incorporated in the reports of Hoover under the Department of Justice?

A. They were incorporated.

Q. Do you know if they are now?

A. For years, but now, no; that is my information is no.

Q. Wait a minute, we will get to it. Your counsel can get to it. Do you know of any correspondence that has come to the officials of Jersey City from the Department of Justice, Federal Bureau of Investigation, as to why the Jersey figures are not incorporated? Just do you know of any correspondence.

A. Other than what I have learned through the Director and the Chief of Police.

Q. I am just asking do you know of any correspondence?

A. No.

MR. MATTHEWS: I think he has answered.

Q. None at all?

A. No.

Q. Mayor, will you at recess see if you can locate any correspondence from the Department of Justice, or the Federal Bureau of Investigation, or Edgar Hoover himself, indicating the reasons why the figures of protection in Jersey City are no longer included in the reports? Will you just see if you can locate the correspondence?

A. Be glad to; but——

Q. All right.

A. But, just a minute.

Q. Now——

A. Why take up the Court's time——

Q. Just a minute, please.

A. Well, just a minute. Why take up all the time when we can settle it in two seconds——

Q. No, I——

A. (Continuing.) —if you will permit me to talk.

Q. No, I won't permit you.

A. Well, why do you deny me the right——

MR. ERNST: If your Honor please, he will have ample time to talk——

THE WITNESS: I can explain this whole situation.

MR. ERNST: No, I am going to proceed in my own way.

THE WITNESS: The controversy that has taken place——

MR. ERNST: Your Honor, I ask——

THE WITNESS: —between this Bureau and Jersey City——

MR. ERNST: Your Honor, I ask that the Mayor conform to the rules of court.

THE WITNESS: But you must be fair, Counselor. There is no rules of court for you.

MR. ERNST: If your Honor please, I call on your Honor for a ruling. These questions call for a direct yes or no answer.

THE COURT: What is the question, please?

MR. ERNST: He answered my question, but he wants to make a speech.

THE COURT: Read the question and the answer.

THE WITNESS: It is no speech when I was asked for a statement.

MR. ERNST: Just a second, Mayor, please.

THE WITNESS: I didn't ask for any speech. Why are you afraid of the truth?

MR. MATTHEWS: That's a good one.

MR. ERNST: Will you read the question and the answer to the Court, please?

THE WITNESS: Why don't you tell the facts here?

THE COURT: Read the question and the answer, please.

THE REPORTER: If the Mayor will just stop a minute——

MR. MAYOR: Why don't you ask him to stop?

(Question and answer read by the reporter.)

THE COURT: What is the relevancy of this, Mr. Ernst?

MR. ERNST: If your Honor please, the testimony indicates, and may I talk without interruption by Mr. Matthews——

MR. MATTHEWS: You may if you don't transcend the bounds of propriety.

MR. ERNST: Your Honor, will you determine——

THE COURT: Excuse me a minute.

(At this point the Court took up another matter at side bar.)

THE COURT: Yes.

MR. ERNST: If your Honor please, in answer to your inquiry, may I say that the Mayor has testified, and I believe entirely honestly, from his point of view, that Jersey City has done a splendid job in the protection of property, that its police are efficient and able to keep order. This testimony impinges on two points that I wish the witness, who is my witness, called by us, would clarify the situation; one goes to the question of whether or not his vast police force cannot also keep order to protect personal liberty as well as property, and the other part of the question goes to this: I intend to prove that the figures of Jersey City in regard to crime and police protection and efficiency have been deemed by Edgar Hoover and the Department of Justice——

MR. MATTHEWS: I object, if your Honor please, to that statement on this record.

MR. ERNST: —to be so dishonest and inaccurate——

MR. MATTHEWS: That's a statement of this counsel.

MR. ERNST: I intend to prove——

MR. MATTHEWS: Which he knows is not true, and I ask the Court at this time to direct him to desist,

because that would be, as your Honor well put it, irrelevant, any hearsay conversation between them.

MR. ERNST: I asked him to get the letters, your Honor, because the letters will show it, if they can be found.

MR. MATTHEWS: I object, if your Honor pleases——

THE COURT: What letters?

MR. ERNST: May I go one further? And will you please stop me if I am in disrespect of the Court, instead of being interrupted? I am answering your inquiry. I want to go one further on this thing. I have asked the witness if he knew of any of the correspondence. He said no, a truthful answer. I asked him if he would look it up. He said he would gladly do it. Now he will not find, in my judgment, those letters.

And so I want to suggest this to get at the truth. Will you wire to Edgar Hoover and I will introduce in evidence any answer that Hoover gives to Mayor Hague.

THE WITNESS: Why don't you let me prove that?

MR. ERNST: As to why——

THE WITNESS: Why don't you let me prove that?

MR. ERNST: You can do it with your counsel.

THE WITNESS: I could clear it up in five minutes, but you don't want me to clear it up. Your Honor, I could clear it up in five minutes.

MR. ERNST: As to why the Department of Justice——

THE COURT: Go ahead.

MR. ERNST: —refuses to believe——

MR. MATTHEWS: I object to that, there is no evidence——

THE WITNESS: Wait a minute.

THE COURT: Go ahead, Mayor.

MR. ERNST: You are going to allow him to make a speech on the subject?

A. Two or three years ago my attention was called by the Chief of Police and the Director of Public Safety to the investigation that the Department of Justice, that is, Mr. Hoover's department, was making of the records of the Jersey City police department. I had obtained a copy of their report and they showed in their report, I have forgotten just exactly the number of homicides that was reported in the Department of Justice to Jersey City. I had the number of homicides investigated and I found that out of the number of homicides there was quite a number of them was automobile accidents and they listed them as murders. That I objected to because they were pure and simple accidents, and they simply told us that they were going to run their department and if we didn't like it they would withdraw, and I said to the Director of Public Safety, "Let them withdraw, they can't involve us in homicides and put us in the category of murders when it is only automobile accidents and mere accidents"; because of a state law we had to book them as murder, the state law compelled us to book them as murder, and I asked the Department of Justice to list them as they should be properly listed, and they said, "No, we will list them as we like. We says, "Then you cannot examine our records any further" and that discontinued the Department of Justice. Now, I don't see anything serious about that, Counselor.

Q. I didn't say it was serious.

A. That is the correct answer.

Q. I didn't say it was serious.

A. Now, if Mr. Hoover and I have disagreed on that I am not at fault, Mr. Hoover is at fault, and I think he is the most competent man in the country today and always have thought so.

Q. Mayor, do you take the position that Edgar Hoover treated the records of Jersey City differently than he treated any other city?

MR. MATTHEWS: He hasn't said anything of the kind.

MR. ERNST: I didn't say that he said it. Will you kindly make your objection as a gentleman and a lawyer.

MR. MATTHEWS: When it comes to a gentleman, sir, you are not in a position to talk because you have proved yourself to the contrary many times.

Q. Will the Mayor kindly answer my question?

MR. MATTHEWS: I say again the Mayor hasn't said that and I object to the question, it is improper.

MR. ERNST: Will your Honor rule?

THE COURT: I sustain the objection.

Q. Mayor, when you say in your story that they treated certain reports of yours in a certain way do you intend to leave the impression that Hoover treated your reports differently than those of other cities?

A. No, sir, he did not, he treats every city alike.

Q. That's right.

A. And I didn't think it was fair, Counselor, to simply send us in with twenty-five murders when we only had two because of accidents and because of a state law.

Q. Now, Mayor, you are a pretty good sporting gentleman, I want to make you this proposition in the form of a question: Will you, to resolve this particular point of testimony, telegraph to Edgar Hoover——

MR. MATTHEWS: I object, your Honor.

Q. Let me finish my question.

MR. MATTHEWS: I object to it, will he do it. Make the request to the witness like a gentleman would.

Q. (Continuing.) —and ask——

MR. MATTHEWS: I object, I object, if your Honor please, will he telegraph to Mr. Hoover.

MR. ERNST: May I finish my question.

A. Counsel, that is very unfair.

MR. MATTHEWS: That is not the way to get evidence in this case.

MR. ERNST: May I finish my question?

THE COURT: I won't permit questions about telegraphing.

Q. Mayor, you will bring over after lunch, I understand it, your entire file with Edgar Hoover on this subject?

MR. MATTHEWS: I object, if your Honor please; he just said that no such correspondence exists.

A. I don't know of any files.

MR. MATTHEWS: He wants to leave it in this position, if at noon there is no correspondence, they wouldn't produce it. We don't say we won't like they do. If they will give us a subpœna we will produce anything they want, anything, everything; we won't argue the subpœna.

MR. ERNST: Will you take this as the equivalent of a verbal subpœna?

MR. MATTHEWS: No.

MR. ERNST: Or do you want it in writing?

MR. MATTHEWS: No, we want it in writing because we want you on record.

MR. ERNST: Just a second.

MR. MATTHEWS: We want you on record.

MR. ERNST: Will you please issue a subpœna for all correspondence with J. Edgar Hoover?

MR. MATTHEWS: I object to his directing his clerk. Go ahead with the case, try it as New Jersey does.

MR. ERNST: All-right, we will get the subpœna.

Q. Mayor, in the papers today I read "Mr. Hague is lauded in the Reich *Times*——

A. Don't blame me for that.

Q. I am not blaming you.

A. The *Daily Worker* might have my picture in it; don't put that on me.

Q. So you cannot be blamed because of what appears in newspapers, is that right?

A. Well——

MR. MATTHEWS: No, he says he cannot be blamed——

A. Some newspapers——

MR. MATTHEWS: —for what the Reich did.

Q. Some newspapers. Now, will you specify the newspapers for which you cannot be blamed?

A. You are sure you didn't put that in there?

Q. Will you specify the newspapers for which you cannot be blamed? You have made a distinction.

A. I object to that, Counselor. I am too smart for that. Just a minute.

Q. You will admit there are some newspapers.

A. If you are trying to get me in a controversy with the newspaper I don't want it.

Q. No, you put your foot in it, Mayor.

A. They are all my friends.

MR. MATTHEWS: You put your foot in your mouth.

Q. Big foot, Mr. Mayor.

MR. MATTHEWS: Big mouth, Mr. Mayor.

A. That is your strong point.

Q. Mr. Mayor, I am going to ask you another question, this question is withdrawn. I am going to ask you now whether you repudiate endorsements appearing in the press from Nazi Germany commending you for your position, do you repudiate them or not?

MR. MATTHEWS: I object.

MR. ERNST: Does the Mayor want to answer?

A. Why, I don't know nothing about it. Repudiate what? I have no contacts——

Q. Mayor, in answer to your question I will tell you what.

A. Here comes the hero.

Q. In headline copyrighted——

A. Here comes the hero in.

Q. —by the Chicago *Tribune* published in the New York *Times* of today, dated headline Berlin, June 15, reading as follows: "The German Official Radio and tomorrow's edition of the Lokalanzieger will glorify Mayor Frank Hague of Jersey City, New Jersey, as a 'Man Fighting for the Cause in the United States'; they will praise him as 'An Outstanding Opponent of Communism.'"

I ask you do you repudiate that endorsement?

A. Has that anything to do with any isms?

Q. Are you going to answer my question?

A. Well, you must enlighten me.

Q. I want to know if you repudiate that endorsement.

MR. MATTHEWS: I object. The Mayor repudiates Naziism and all isms except Americanism.

THE WITNESS: Right.

MR. MATTHEWS: That is why he repudiates you; he doesn't believe you represent Americanism.

Q. Mayor, you repudiate Naziism, your counsel says.

A. I repudiate any ism, I don't care what it is, that is un-American; I don't care who is behind it or who is for it or who is against it.

Q. Now, you don't mean any ism?

A. Well, against Americanism.

Q. Do you repudiate Naziism?

MR. MATTHEWS: He has already answered he repudiates all isms that are anti-American. What possible relevancy has this to this case, trying it for the newspapers?

MR. ERNST: Your Honor please, I want to know whether the man is discriminating on certain isms in respect to denial of civil liberties, free speech, free press, free assembly.

THE COURT: We cannot go into national affairs in too great detail.

Q. I just want to know if you repudiate Naziism.

A. I repudiate any ism against America.

Q. You refuse to say whether you repudiate Naziism?

MR. MATTHEWS: He hasn't said anything of the kind. That is to put a cheap headline in some sheet subsidized by him, and that will be the streamer "He refuses to repudiate Naziism." He repudiates any kind of ism that is against America and he repudiates you.

MR. ERNST: If your Honor please, will you kindly ask Mr. Hamill's assistant to make objections to testimony? (Laughter.) And to proceed in an orderly fashion without speeches.

MR. MATTHEWS: That's not a speech.

MR. ERNST: I shall not stoop to his level, no matter how he behaves.

MR. MATTHEWS: If you did, you would have to get up near the ceiling. I am picking you out of the gutter, continually.

(Noise in the court room.)

MR. ERNST: This is a court of law.

MR. MATTHEWS: You have made it a circus.

THE MARSHAL: Quiet, please. No laughter.

MR. FRAZER: May I ask the Court to restrain Sir John's logorrhea.

MR. ERNST: If your Honor please, will you instruct counsel——

THE COURT: Will you proceed, Mr. Ernst?

MR. ERNST: No, I think I am entitled to a direction of the Court, as to whether or not this gentleman, representing Frank Hague, and I may add in the mood of the entire Hague plan, against civil liberties, shall be allowed to continue, not to make objections, not to take exceptions, but just to make speeches?

MR. MATTHEWS: Now, if your Honor please, you can see that that statement of Mr. Ernst is a speech, but the trouble with Ernst is he makes such bad speeches he doesn't recognize them as speeches, and I don't blame him. Now, if the objection is to my objecting, I submit that I should not be prevented from objecting, but if the objection is to his making remarks about Naziism and lugging in extraneous issues, I think my objection is well placed.

THE COURT: Well, I have said it before, I don't think personalities are relevant.

MR. MATTHEWS: No.

MR. ERNST: Thank you very much, your Honor. I hope counsel will not interrupt——

MR. MATTHEWS: No, I never interrupt except to act as a gentleman, and he has such a poor method that I have to answer him in kind.

MR. ERNST: Thank you very much, your Honor. I hope that counsel will live up to your ruling.

I think Mr. Matthews should be restrained from further personalities.

THE COURT: Yes, they are not relevant here.

MR. MATTHEWS: Only when I have to answer will I ever indulge in them. When you are in Rome, you have to do as the Romans do, although I don't like to call my opponent a Roman.

MR. ERNST: If your Honor please, we are not in Jersey City——

MR. MATTHEWS: No, and we are not in New York.

MR. ERNST: Let's proceed.

MR. MATTHEWS: We are in the Federal court.

Q. Mayor, you are opposed to Socialism?

A. Yes.

Q. You are opposed to Communism?

A. Socialism in certain respects, now. Now Socialism for a long while was——

Q. I say now.

A. Well, wait a minute, just a minute.

Q. I say now, Mayor.

A. Until Norman Thomas got to be the head of it, and then they went over to Communism. Now they are all out.

Q. When did Norman Thomas get to be the head of it?

A. Well, the day he was pictured in New York with the salute.

Q. What date was that, Mayor?

A. The May Day Parade.

Q. All right. And he never was the head of it before?

A. And they were singing the Nationale.
Q. And he never was the head of it before?
A. Oh, he has been the head of it for a long while.
Q. How far back, would you say?
A. Oh, ten years.
Q. Ten years?

THE COURT: Will you excuse me a minute, gentlemen?

MR. ERNST: Yes, your Honor.

THE COURT: I am obliged to take a short recess.

(At this point a short recess was taken.)

Q. Mayor, do you believe that the position of a man's hand held over his head in relation to maybe a fist is some indication as to whether or not he is an undesirable, just some indication? There may be other factors. Do you believe it is some indication?

MR. MATTHEWS: Now, if your Honor please——

A. It depends upon——

MR. MATTHEWS: Wait a while, wait a while, that question isn't a relevant question unless it recites that the man's hand is over his head with relation to a fist at a Communist meeting; it depends on the kind of meeting.

MR. ERNST: Your Honor, please, the Mayor himself, if you want to take the time, referred to it as some evidence.

THE COURT: He did.

MR. ERNST: I just want to ask him if he considers it some evidence of undesirability.

A. I referred to the *Times* picture which charged him as being a Communist and charged him with the pinks and greens and reds.

Q. And in that picture you saw, you say, Norman Thomas with his hand raised over his head in fist formation, and that you took that fact into consideration?

A. Yes, but the papers said in the Russian salute.

Q. The papers said it?

A. Yes.

Q. Did you look at the pictures?

A. The picture was there in the *Times,* the Sunday Times, the day after the——

Q. Did you look at the picture, Mayor?

A. Yes, yes.

Q. And the picture showed, as I understand your evidence, that the man had his hand raised over his head and the fingers were formed in fist formation, right?

A. And——

Q. Did it show that?

A. And twenty-five others.

Q. No——

A. On the stage with him.

Q. That's right. But that one man had it?

A. Yes.

Q. Now, Mayor, may I ask you to look at this picture which is the Newark *Star Eagle* of Saturday, June 11, 1938, and merely ask you whether that contains a picture of Frank Hague?

A. Yes, yes, sure.

MR. ERNST: If your Honor please, I offer in evidence page——

THE WITNESS: You don't charge me with having made the Russian salute, do you?

MR. ERNST: Will you kindly wait. You are a witness in a court of law.

MR. ERNST: I offer in evidence—may I just have my exhibit in my own hands?

MR. MATTHEWS: Yes, yes, sure.

MR. ERNST: I offer in evidence page 5 of the Newark *Star Eagle* of Saturday, June 11, 1938, with particular reference to a picture of one Frank Hague, under a caption entitled "Hague with his legal battery."

MR. MATHEWS: May I see the picture now before it is offered?

(Paper handed to Mr. Matthews.)

THE COURT: Are you in it, Mr. Matthews?

MR. MATTHEWS: Yes, it is a good picture of me. I have got my cigar and my brief case. Eddie O'Mara, and Charlie, Dan Casey, Kennelly, and poor Jimmie Hamill—one side of you is spoiled with Frank's arm there.

MR. HAMILL: I am the best looking man in it.

MR. MATTHEWS: Yes, that's true, Jimmie.

We have absolutely no objection to that picture going in evidence. It shows his pulchritude.

MR. ERNST: May I stop counsel as to what it shows? The picture speaks for itself.

If your Honor please, I would like to show it to you so that you may see whether or not it is admissible.

THE COURT: Yes, there is no objection, so it is admitted.

MR. ERNST: All right.

(Received in evidence and marked Exhibit P-39.)

MR. MATTHEWS: No objection.

Q. Mayor, are you familiar with a paper called the *Newark Sunday Call*?

A. Yes, sir.

Q. Is that one of the reliable or unreliable papers?

A. It certainly dislikes me.

Q. Now, Mayor, I want you to look at the issue of November 21, 1937, of this paper, on page number one——

MR. ERNST (To Mr. Hershenstein): Either stand there or here, if you don't mind.

MR. HERSHENSTEIN: I like to watch you.

MR. ERNST: I know; I am just moving around——

THE WITNESS: I guarantee he won't stab you in the back, Morris.

MR. ERNST: No, no implication.

THE WITNESS: No, no.

MR. ERNST: Just an implication of courtesy.

THE WITNESS: Charlie is your friend.

Q. May I indicate, Mayor, that I am going to show you the issue of November 21, 1937, and ask you to read the column which has a caption entitled "C. I. O. Unit here plans invasion of Jersey City," and I want you to read the entire article and then I will ask you some questions in regard to it.

Mayor, I think I can help you, if you don't mind. I will indicate the line of general questions that I want to ask. I will ask specific questions later, so that while you are reading you can particularly follow the things that I have in mind. I want to ask you whether you see anything other than the headline, any word, phrase or comment in the report itself that indicates in any way that there was to be an invasion, that there was to be two hundred or forty people or three thousand or any number or any implication of anything but peace, and if there is anything there that implies disorder.

MR. MATTHEWS: I object, if your Honor please. He wants the mayor to say that the headlines of the

Sunday Call are false; Eddie Bataille, Eddie Hipp to the rescue." You surely don't mean to ask the mayor if the headline is false and the report true; newspapers don't do that, not much.

THE COURT: Is this the same statement we have been talking about by Carney?

THE WITNESS: This is the first statement.

Q. This is what?

A. This is the same statement that appeared in the *Newark News* and all the other New York papers of Carney's invasion of Jersey City.

Q. Now, Mayor, did you read it when it went over to the next page?

A. Counselor, I imagine that that is a scaring headline for any community.

Q. Mayor, I asked you a simple question; did you read——

A. No.

Q. —the article on the next page. Will you please do so?

A. I didn't read the complete article on the front page.

Q. I would like you to read the complete article.

A. It will take too long.

Q. No, we can wait, no longer than Mr. Matthews' speeches.

MR. MATTHEWS: You are borrowing more trouble for yourself, I can see that.

Pardon me just a minute, now, your Honor, before the mayor replies to that may I be permitted to read the article so that I can see whether it is objectionable?

THE COURT: It is the same one we talked about, isn't it, at great length?

MR. MATTHEWS: I am frank to say I read the *Call* every Sunday but I don't recall that I saw this article.

I will hurry. . . . I have now familiarized myself with the article.

MR. ERNST: Your Honor, I wish to offer in evidence the *Newark Sunday Call,* issue November 21——

MR. MATTHEWS: I have no objection.

MR. ERNST: —1937.

MR. MATTHEWS: I have no objection to the *Sunday Call* going in evidence.

MR. ERNST: This as well as the picture?

THE COURT: He has no objection.

MR. MATTHEWS: I have no objection at all.

MR. ERNST: I wish to put in evidence the issue of the *Newark Sunday Call,* November 21, 1937, late city edition, the issue referred to by the witness in his last questions with particular reference to the article which has a caption bearing "C. I. O. unit here plans invasion of Jersey City."

MR. MATTHEWS: I have no objection to the *Sunday Call* going in evidence.

(Received and marked Exhibit P-40.)

Q. Mayor, in reading that article did you find any reference at all to two thousand men or three thousand men? Just yes or no, did you find any reference?

A. No, sir.

Q. Did you find any reference to any other number of men?

A. Other than the headlines "C. I. O. plans invasion of Jersey City."

Q. Now, Mayor, I read the headline into the record and my questions are only going to relate to the article itself. I ask you do you find any reference in the article itself to any number of men?

A. No.

Q. Do you find any reference in the article itself as to any invasion or entrance into Jersey City?

A. Well, the headline——

Q. The article itself, Mayor, do you find any reference in the article itself?

A. No, other than the caption, the headline.

Q. Mayor, will you kindly answer my question?

A. No, sir.

Q. Do you find anything in the article itself?

A. No, sir.

Q. Do you find anything in the article itself that in any way indicates that there would be disorder, the article itself?

A. The article does not state that there is going to be any disorder.

Q. Do you find anything in the article, that is, other than an indication of a peaceful move, toward the organization of labor in Jersey City, nothing in the article itself, is there?

A. Nothing that I could see.

Q. Mayor, under what circumstances, in your opinion, have you the authority and the legal right to take people out of Jersey City and put them outside of Jersey City, take them in Jersey City, and put them outside? Under what circumstances have you the right of what has been called in this trial deporting?

A. Oh, there was nobody deported. What do you mean by deported?

Q. I didn't ask you that. Is there in your opinion any right to take people from Jersey City and remove them outside of Jersey City?

A. Are you referring to the presence of Mr. Thomas here? Is that what you are referring to?

A. No, I am not at all.

A. Well, who do you refer to?

Q. I am referring to a basic proposition of just simply do you claim to have the right to take human beings, living

or temporarily in Jersey City, and put them out of Jersey City? Do you claim to have that right?

A. That entirely depends on circumstances, Counselor.

Q. All right. Now, Mayor, will you tell us under what circumstances?

A. As far as putting out, there is nobody putting out at all.

Q. All right. Let me ask——

MR. HERSHENSTEIN: Let him finish, please.

A. (Continuing.) There is no putting out.

Q. Let me ask my question again.

A. If a condition may arise where police officers are present and they find that the condition is so dangerous and involves disorder and possibly bodily harm, the fact of escorting anyone out of that scene of danger—that isn't deporting people, Counselor.

Q. No, I didn't say it was, Mayor.

A. Well, I say that's the fact.

Q. No, I didn't say that was deporting. You are talking about something that I haven't asked you about.

A. You said deporting, first.

Q. No, no, you are talking about taking people out of the scene of danger.

A. No, no——

Q. Now, will you listen to me?

A. I will give you an answer, Counselor; if you don't get so excited, we will get along better.

Q. Mayor, if you will listen; it is a simple question.

A. I know what the question is.

Q. Let me try it again.

A. But I know what your question is, Counselor.

Q. No, you don't. Your answer shows it. You don't understand it at all.

A. No, my answer don't please you.

Q. I am just asking a very simple question: Is there any circumstance at all, don't tell me the circumstance, just

is there any, yes or no, when you claim that the police have the power to take a human being in Jersey City and remove him out of Jersey City?

A. Yes, sir.

Q. Is there?

A. There is.

Q. That's the answer.

A. Now, you want me to explain, don't you?

Q. No, I don't.

A. Oh, well, you will have to.

Q. I will let you explain to Sir John Matthews.

A. Well, just a minute, now. Just a minute; now be fair.

Q. No, no, I am not going to let you make a speech. You can't make a speech now.

A. You must be fair. I endeavored to explain to you——

Q. No, I will ask you those questions.

A. But you say that frequently; you say that frequently but you don't come back to them.

MR. HAMILL: May I say something, your Honor?

Mr. Ernst's question, as it appears on the record, is this: are there any circumstances under which you claim the power—I would say duty—but he uses the word "power"—under which you claim the power to remove persons from Jersey City? The answer is yes, and then he goes on to tell what the circumstances are; and why shouldn't he be permitted, in fairness, to do that?

MR. ERNST: No, I didn't ask him the circumstances. are you moving to strike out his answer?

MR. HAMILL: No, I am moving——

MR. ERNST: Well, wait until I frame a question, Jim, and then you can object to my question.

MR. HAMILL: Here is what you are doing, outside of all this; you are cross-examining your own witness. Now, I know that you are claiming he is a hostile witness, but my understanding of the law is that the mere position of a man as a defendant does not ipso facto make him hostile. He must evince hostility, and this witness has shown a willingness to answer all of your questions, and there is nothing about hostility on the part of the witness in the record.

MR. ERNST: Not at all. He called me Morris.

MR. HAMILL: And the Court——

MR. ERNST: He called me Morris yesterday.

MR. HAMILL: Yes, which shows that you and your witness are on friendly terms.

MR. MATTHEWS: Sholem aleichm.

MR. ERNST: I will be calling him Frank if you will let me alone a minute.

MR. HAMILL: That shows you are on good terms. If you will listen to him, he will no doubt convert you to his views, for they are just views. But he should be permitted to explain the circumstances.

MR. ERNST: I am going to ask him the circumstances.

THE COURT: As I understand, Mr. Hamill, the Mayor said that his position is that he could deport people—I shouldn't use the word "deport," that is a word of art, so to speak—that persons can be removed for their own safety.

THE WITNESS: Yes.

THE COURT: Now, as I understand it, the complainants say they can be removed for no purpose whatever. That is their legal position. Is that correct, Mr. Ernst?

MR. ERNST: I want to ask him——

THE COURT. And I suppose I will have to, when I come to decide the case, adjudicate whether that is correct, whether the complainants' position is correct. I will therefore express no opinion orally about it.

MR. HAMILL: No. Now he wants to explain the circumstances, and I think he has a right to explain the circumstances.

MR. ERNST: I am going to ask him, if you will only let me ask my question.

A. Yes, but you do that so frequently and you don't come back.

MR. HAMILL: When he tried to explain the circumstances you stopped him.

MR. ERNST: I am going to get it in an orderly fashion in my way.

A. You let me hang out there on a limb and run away.

Q. Of course, I am going to hang you further out and your counsel can pull you down.

A. I will pull myself down, don't worry about that.

MR. HAMILL: I suggest you adopt the plan I suggested and let him explain the circumstances.

THE COURT: Isn't it your contention that there are no circumstances under which persons may be escorted out of Jersey City?

MR. ERNST: That's right, your Honor.

THE COURT: That being so, I don't think any further inquiry is necessary.

MR. MATTHEWS: Your Honor please, I take it that that ruling means the inquiry that might later be addressed by Mr. Hamill or his associates and assistants as to the circumstances would be also barred.

THE COURT: Oh, I think so.

MR. HAMILL: I think he should be permitted to explain the circumstances.

MR. MATTHEWS: Just a minute. In order that your Honor——

MR. HAMILL: No harm in having our opinions on record.

THE COURT: Yes, go ahead.

MR. MATTHEWS: Now, may I have read to you the question which the Mayor answered yes so as to show you that if your Honor ruled that way it would bar me from asking him questions on cross-examination.

THE COURT: We had better have the question.

MR. MATTHEWS: Yes; because it is a rather important one, it leaves an isolated question in the record. One could make much of that brief.

(The reported re-read questions and answers as follows: "Is there any circumstances at all, don't tell me the circumstances, just is there any, yes or no, when you claim that the police have the power to take a human being in Jersey City and remove him out of Jersey City.

"A. Yes, sir.

"Q. Is there?

"A. There is.

"Q. That's the answer.")

MR. MATTHEWS: Your Honor, there I would have to cross-examine, of course.

THE COURT: Well, I understood from a previous answer from the witness that that circumstance, which is not answered as to that question, is for their own safety; is that correct?

MR. MATTHEWS: Well, that would be an answer.

THE COURT: I mean it has been said by both the witness and Inspector Casey.

MR. MATTHEWS: But you see, your Honor please, in judging the Mayor's testimony, of course you cannot take Commissioner Casey.

THE COURT: But I think the Mayor also has said that, is that not correct?

MR. MATTHEWS: I think so. And if your Honor understands that the record shows that the Mayor said he would take a person out from the danger zone or remove him where it was a question of his life or personal safety, then I won't have to ask any further question on that.

THE COURT: Is that the record?

MR. ERNST: No, your Honor, I have not talked about danger zones at all.

THE COURT: No, no, out of the city

MR. ERNST: Out of the city, so we are not talking about danger zones.

THE COURT: As I understand it—don't let me, of course, put a legal position in your month, Mr. Ernst, so correct me right away if I am wrong—as I understand it plaintiffs' position is that there are no circumstances which justify the removal of a human being from the municipal limits of Jersey City by force or persuasion—well, leave out "persuasion"—by force.

MR. ERNST: By the governing authorities. That is my position, and I understand that the Mayor has said that there are some circumstances where such steps can be taken.

THE COURT: Yes.

MR. MATTHEWS: And my position is that I want that explained on cross-examination.

THE COURT: I think he has said that the circumstances are personal safety.

MR. MATTHEWS: Where the person's life is in danger.

THE COURT: Let us say personal safety. Do you want to limit it?

MR. MATTHEWS: No, I don't want to limit it, I want the facts in the record, where his life would be in danger by his remaining in any proximity.

THE COURT: Perhaps we could save time by your asking the Mayor what the circumstances are.

MR. ERNST: No, your Honor please. Then in interpreting the word "safety" it must be in relation to the power of the police of the community to procure him safety. It also raises the question whether instead of getting him to this hypothetical safety by removal they couldn't get him to safety by another removal, to wit, to a police station.

THE COURT: Well, I understood your position to be that the removal, if any, must be by way of arrest, is that your position?

MR. ERNST: No, there can be no removal out of the city.

THE COURT: That is what I understood.

MR. ERNST: The removal from the particular situs that the man holds could be by means of arrest and he could be taken to a place of incarceration.

MR. MATTHEWS: We are not going to bother about what he contends but we don't want this record barred from cross-examination because the Mayor's contention is that when a person is removed either to another part of the city or out of the city——

THE COURT: Or out of the municipal limits.

MR. MATTHEWS: —or out of the municipal limits, then it is only where the man's life is in danger, and to do otherwise would not be protecting him.

THE COURT: That is correct. I think we understand it.

MR. MATTHEWS: All right, your Honor.

MR. ERNST: Then I take it, because this is an important issue in this respect——

THE COURT: It certainly is.

MR. ERNST: Then I take it that the position of Jersey City enforcement agents is that they have the power to remove outside of the city limits for the purposes specified by Mr. Matthews.

MR. MATTHEWS: I am not testifying; I would be glad to take the stand and testify if you want me to.

MR. ERNST: No, I understand that that is the position now taken by the witness on the stand.

MR. MATTHEWS: He hasn't even quoted me correctly.

MR. ERNST: What is the use of our talking if it is for nothing?

MR. MATTHEWS: What is the use of your talking?

THE COURT: If the position of Jersey City is one way and that position, in my humble view, is wrong legally, of course I will have to enjoin that position, so therefore I think I am entitled to know, maybe if not this minute, because maybe you want to give it some thought——

MR. ERNST: That will be given to you in the brief, what we contend.

THE COURT: Yes, but we have to base the proof on evidence.

MR. MATTHEWS: Yes, that is why I say I want to cross-examine the Mayor where I can ask him leading questions, you know, better than trying to get it on direct.

THE COURT: Proceed then.

MR. ERNST: Your Honor please, do I take it that you are going to open the door to cross-examination indicating that the Mayor's answer is to be qualified?

THE COURT: I am going to permit it only for the purpose of his stating his legal position so that I can agree with it or disagree with it as the case may be.

By MR. ERNST:

Q. I would like to ask the Mayor one further question on the subject at this time.

MR. ERNST: May I first say for the record that all of these phrases about murder and personal safety, etc., used by the counsel for Mr. Hague and the defendants in no way implies any admission on our part that as to the evidence heretofore produced or hereafter produced such factors existed.

THE COURT: No, no, the evidence, of course, I will have to analyze.

MR. MATTHEWS: We don't stipulate any evidence.

Q. May I just ask one other question on the subject. Can you tell me under what statute or ordinance or portion of the state constitution or United States Constitution you claim the right to so escort people out of Jersey City?

MR. MATTHEWS: I object.

Q. Just does he know of any.

MR. MATTHEWS: I object, that would be construing the ordinance, calling for a conclusion of law from him and Mr. Hamill is ready to take the witness stand on

that; he has drafted the ordinances and the state law shall be interpreted by the court.

THE COURT: Yes, I think that is true. I think that is a proper question, Mr. Ernst but I think it should be directed to the legal department.

MR. ERNST: No, all I want to know is whether the chief executive of the city knows of a law; then we can address ourselves to the attorneys.

THE COURT: Just answer that yes or no.

Q. Do you know of any law under which escorting of human beings out of Jersey City is permitted, do you know of any law?

THE COURT: You mean written law.

A. Well, there is plenty of law, your Honor, to give the police authorities the right to escort anyone to a place of safety. You are asking out of Jersey City. You are saying the only place we can escort them is to a police station. I disagree with you on that and have always disagreed with you.

Q. Mayor, can you now refer to any written law upon which you rely for that authority?

A. Why, the mere creation of a police department, Counselor, is sufficient law to give authorities the right to escort people to safety.

Q. And so you say that the law creating the police department of Jersey City gives that power?

A. By all means gives them power to, as I said, safeguard lives and property.

Q. Mayor, I want to talk to you a moment about this question of taking people out of the city, not from the point of view of law,—that we will take up with counsel, from the point of view of its relations to what you call Americanism. The first question is do you know of any other city in the United States which escorts people out of that city for any purpose whatsoever?

A. I know where they have done it in New York, to escort them to a place of safety; I don't know whether that extended beyond the outskirts of the city limits.

Q. You don't know of any case where New York City escorted people out of New York City into Jersey City, do you?

A. No.

Q. Now, Mayor, just think with me on this subject. What if Mayor LaGuardia and the council should adopt your position and escort people they thought undesirable and put them over to New Jersey and what if by chance you agreed with the Mayor of New York City and you escorted them back, would not the result be that those people would be living forever on the ferry boat?

MR. MATTHEWS: I object to that question, if your Honor please, totally irrelevant to this issue, hypothetical and irrelevant besides.

THE COURT: Yes, I sustain the objection.

MR. ERNST: I will take an exception, your Honor, please, on the record.

(Which exception is hereby allowed and sealed accordingly.) (Sealed)

A. Shall I answer that question?

MR. MATTHEWS: No, no, it wasn't asked to be answered.

Q. Does the witness care to answer it?

A. No.

MR. MATTHEWS: It wasn't asked to be answered.

A. I don't object to answering it.

Q. I know you don't, Mayor. Mr. Hague, have you ever read the constitution or by-laws or any CIO union?

MR. MATTHEWS: I object as irrelevant to this issue.

MR. ERNST: You cannot tell whether it is irrelevant until we go further.

THE COURT: Answer yes or no, will you, please.

A. No, I have never.

Q. Have you ever read the constitution or by-laws of any union affiliated with the American Federation of Labor?

A. No, sir.

Q. Will you name me please ten or let's say twelve CIO leaders who you have said were undesirables, not the rank and file, the leaders; can you name me ten or twelve?

A. Well, John Brophy and all his assistants.

Q. Name me another one besides John Brophy.

A. Well, I don't know the names, I have read about Mr. Lewis' utterance condemning John Brophy and his assistants, who is now taking a very prominent part in the leadership of the CIO.

Q. Now, Mayor, you know that isn't what I asked you; I asked you to name me some names.

Q. I am naming you John Brophy and all his assistants, that's all I know.

Q. Can you name me another name?

MR. MATTHEWS: Well, he has already named Bridges in this case.

MR. ERNST: If your Honor will please ask counsel not to prompt the witness. This witness is a competent human being and does not have to have words put in his mouth by Mr. Matthews.

Q. Do you know another one besides Mr. Bridges supplied by your counsel?

A. Well, I forgot about Harry.

Q. All right, now, name me another one.

A. Curran.

Q. Who?

A. Curran.

Q. Curran.

A. Who was in the Communist parade with a big banner across his shoulder.

Q. I didn't ask you that either, did I?

A. Well, we might as well——

Q. That's just some bull on your part.

A. We might as well get that in.

Q. Now, Mayor; name your fourth.

THE COURT: What is the first name? May we have that in the record?

THE WITNESS: I don't know the first name. William, I think.

MR. MATTHEWS: I can get it for you, Mayor.

THE COURT: Just so we have it on the record.

MR. MATTHEWS: C-u-r-r-a-n, was it?

THE WITNESS: Yes. He is Bridges' representative in New York.

MR. MATTHEWS: It is Joseph, yes.

THE COURT: All right.

MR. MATTHEWS: Joseph Curran.

Q. Can you name me another one?

A. Not off hand, Counselor. I may think of one later.

MR. MATTHEWS: Could I help the witness?

MR. ERNST: No, thank you.

MR. MATTHEWS: You are welcome.

MR. ERNST: I just wanted to find out whether this witness knew. I know, sir, that you can read.

MR. MATTHEWS: I am glad that you know that.

MR. ERNST: All right.

MR. MATTHEWS: You don't seem to manifest much knowledge of anything else.

MR. ERNST: Now, if your Honor please, may I please not be interrupted——

THE COURT: Ten minutes' recess.

(At this point a short recess was taken.)

12:25 p. m.

(The clerk made the following announcement):

THE CLERK: The Court wishes me to announce that because of an engagement that Mr. Matthews has in his office, not in relation to this case, the Court will now take a recess until a quarter of two.

MR. MATTHEWS: Will you thank the Court for me?

MR. ERNST: And thank Mr. Ernst for consenting.

MR. MATTHEWS: Thank you, Mr. Ernst, for consenting. (Noon recess.)

AFTERNOON SESSION.

FRANK HAGUE, resumed the stnad.

DIRECT EXAMINATION (continued).

By MR. ERNST:

MR. ERNST: All right, your Honor.

THE COURT: Yes, certainly.

Q. Mayor, did you find out if Mrs. Rickett, wife of a reporter on the Jersey *Journal* is in the employ of the county or state?

A. Yes, sir.

Q. What job has she got?

A. She is investigator of the Common Pleas Court of Hudson County. She was appointed by four judges, Counselor, two Democrats and two Republicans. It is a bipartisan court and they appointed her, four votes, appointed her unanimously as an investigator, my office informs me.

Q. Thank you. Mayor, in coming to a decision as to whether or not people are offensive as speakers to the people of Jersey City, I want to ask you if you take into consideration comments of people holding high official positions in the State of New Jersey to the effect that certain people are not offensive even though you may think so?

A. I cannot follow you, Counselor. You say comments of certain high officials in New Jersey.

Q. Yes, do you take those into consideration if they disagree with you?

A. Oh, you mean public comments?

Q. Yes, if they disagree with you?

A. If they disagree with me?

Q. Yes. Do you take them into consideration?

A. Oh, yes, I take all comments into consideration.

Q. I want to read you a comment which appeared around May 27, 1938, being a statement purporting to issue from Harry I. Finley, F-i-n-l-e-y, secretary to United States Senator William H. Smathers, Senator from the State of New Jersey, and then I will ask you one or two brief questions.

MR. MATTHEWS: I object to that, if your Honor please.

THE COURT: Is that a written statement? May I see it, Mr. Ernst?

MR. ERNST: I can locate the issue of the newspaper from which this was copied, if necessary (handing to the court).

THE COURT: No, I won't permit that.

MR. ERNST: I would like to state my purpose and then take my exception.

THE COURT: No, I won't even permit that. If you want to have that, you will have to call him.

MR. ERNST: If what?

THE COURT: You will have to call him.

MR. ERNST: Call him?

THE COURT: Yes. You may have an exception.

MR. ERNST: Yes, I would like to take an exception on the ground that a quote published in a newspaper on the subject of for or against——

MR. MATTHEWS: Now, the court——

MR. ERNST:—the Mayor's position should be admitted.

THE COURT: Mr. Ernst is not going to quote it, Mr. Matthews.

MR. ERNST: What?

THE COURT: I said to Mr. Matthews you were not going to quote it after my ruling; you don't need to worry.

MR. ERNST: Not what?

THE COURT: That you were not going to quote it after my ruling.

MR. ERNST: Oh, no, of course not.

MR. MATTHEWS: All right, I withdraw it.

MR. ERNST: May I repeat again without interruption that I want to have it noted on the record that I wanted to introduce the statement on the theory that statements for or against the Mayor's position in regard to the denial of civil liberties was material to the issue on the ground of the definition of Americanism and on the ground of discovering the basis for the Mayor's determination in particular cases.

THE COURT: My ruling is the persons who made the statements will have to be called.

MR. ERNST: May I take an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Mayor, there were various meetings and parades at the Armory, Chamber of Commerce, public square meetings, particularly those referred to in connection with the leadership of Mr. Kelly. I want to ask you whether you contributed any money whatsoever for any of those gatherings, whether for flags, billboards, notices, cards or any other of the instrumentalities used to organize the protests.

MR. MATTHEWS: I object as immaterial, whether he did or not, or irrelevant.

THE COURT: I will allow that.

MR. MATTHEWS: Your Honor will allow an exception?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. Offhanded I cannot just exactly say, I think I contributed, Counselor, offhanded; if you will allow me I could get you the amounts.

Q. Would you know approximately the amounts?

A. No, it is several hundred dollars, I think, more or less, not much.

Q. Do you know whether or not the billboards, postal cards or other printed material used in connection with any of those protests were paid for and financed by any governmental budget, whether city or otherwise, in part or in total?

A. I don't think so, I don't know; I don't think so.

Q. Mayor, may I ask you to think again, specifically in connection with the printing of the billboard protests——

A. What billboards are you referring to?

Q. There were billboards about Americanism, Norman Thomas protests that were on the highway; isn't it a fact that those billboard protests in support of you and against the people who wanted to speak in Jersey City, weren't they paid for out of governmental funds in part?

A. I don't think so.

Q. You don't think so.

A. I think you will find that those are subscriptions that Hugh Kelly has been gathering and collecting.

Q. Mayor, you would deny a permit to speak solely because the speaker intended to preach revolution, is that right?

A. Did I deny it, you say?

Q. You would, you would deny a permit solely on the grounds if you thought that a man was going to preach revolution?

A. Oh, I would deny that, yes.

Q. Mayor, you would deny a permit to speak solely on the ground that the man is a member or a high official, put it that way, and known to be such, of the Communist Party?

A. I would object to that, yes.

Q. Mayor, for years, Jersey City allowed, as one of the exhibits shows, meetings of the Communist Party, is that right?

A. Yes.

Q. And as I understand it, within the last few months, or a year, there has been what you call trouble, and from now on there will no more such permits granted?

A. Well, I wouldn't say that. That depends upon the temperament of the people, Counselor. Of course, our condition as it exists today is not so hot to permit any of these people to come in. We can't guarantee them protection, with the attitude of the people, because of this vast publicity.

Q. Now, Mayor, how would an applicant, whom you term undesirable, ascertain whether or not you have come to the conclusion that the temper of the people is such that they wouldn't be offended if he came in to speak?

A. Well, it is a simple matter for us to determine who would be undesirable.

Q. All right.

A. From the expressions. Various civic and fraternal orders and the veterans, as they have expressed themselves in the past. Now, I assume that if there is a protest filed with me or filed with the Director of Public Safety today,

six months from now that same protest still remains until changed by those who file it.

Q. So that an applicant among the so-called undesirable list, really, in order to find out when he may become a desirable, should file applications every day?

A. Oh no.

Q. Or every week?

A. Oh no, I wouldn't say that.

Q. Well, Mayor, will you advise the public generally when you have made up your mind that certain people whom you now think are undesirable become desirable?

MR. MATTHEWS: I object to that question, if your Honor pleases.

THE COURT: I don't quite understand it. I heard it but I didn't quite understand it.

A. That would be rather hard.

(Pending question read by the reporter.)

MR. MATTHEWS: That is incompetent.

THE COURT: No, I will sustain the objection.

THE WITNESS: Has the question been allowed?

THE COURT: No, I sustained the objection.

MR. ERNST: No, the Judge sustained an objection.

THE WITNESS: Oh, pardon me.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. Mayor, should there be protests during the period of the coming election period against the right of the Socialist Party to hold meetings, you will bow to the protests?

MR. MATTHEWS: I object to that question as incompetent, if your Honor pleases, calling for what the

Mayor will do with reference to the Socialists, who are not a party to this issue.

THE COURT: How does the future action, Mr. Ernst, bear upon this current, present issue?

MR. ERNST: If your Honor please, if I may answer your question——

THE COURT: Yes.

MR. ERNST: —without interruption, I am in this position: as I understand the witness, and I doubt whether he has made himself clear or whether I have understood him, he has testified that certain people are undesirables; he has described in various ways this test as to their undesirability, and then he says that as long as those protests against those undesirables stand on the record, he will assume that they continue as protests, and, as I understand him, he says as long as there are these protests, they can't speak.

Now, I doubt if the Mayor meant that exactly, and if you want to have it read back, I can locate the question that creates the quandary.

THE COURT: I thought his position was—let me state what I thought it was, and then you can correct it, if it is not correct—I thought his position was that as long as the temper of the people, I thought those were the words he used, led him to believe that there would be violence if these people spoke, that he would forbid their speaking. I thought that was his position.

MR. MATTHEWS: Yes, your Honor.

THE COURT: Is that accurate?

THE WITNESS: Yes,

MR. MATTHEWS: Your Honor please, there is the answer of the Mayor's——

THE WITNESS: What I meant, your Honor, to the counsel's last question was that where a group of men

and women—where there is an uprising in the form of a protest, if they file petitions with the governing body, that that protest about a certain condition, let us say about some condition of a gas station or some condition, we always assume, Counselor, that that protest still remains unless those folks come down and say that they have withdrawn their opposition. That is the rule of the governing body.

Q. Now, Mayor——

A. (Continuing.) The zoning condition, now we always have assumed that where a group of taxpayers have formed themselves into some society and they protest, well, now, not as long as that society allows that protest to remain on file shall that gas station or that zoning ordinance be complied with.

Q. And you treat the applications for the right of meetings exactly as the zoning protests?

A. That is the rule, if a thousand men or a thousand women assemble and protest about a condition we assume that that condition, that they still remain hostile without they notify us by writing; otherwise, Counselor, they would be meeting every week.

Q. Mayor, assume that a thousand working people in the City of Jersey City file a protest against some member of the Chamber of Commerce getting a permit, do you mean to say that you would then not allow the member of the Chamber of Commerce to speak just because a thousand people protested?

A. Well, that entirely depends, Counselor. Of course, I cannot see how you can single out a member of the Chamber of Commerce as against a hostile group that is attempting to overthrow the government. There is a vast difference between those two applications.

Q. So that the question of the protest is not the important thing, is it?

A. A question of the character of those who are making the application for the meeting.

Q. If Norman Thomas this afternoon, for example, files an application now, to get the issue clarified, in due time, for the right to speak somewhere in Jersey City during the next campaign on behalf of the Socialist ticket, what is your procedure, do you go to the protestants and ask them if they withdraw or does he have to assume that the protests stand?

A. Norman Thomas, at the present time, in our estimation, has set himself up because of that picture that you refer to and his position at the May Day parade and his speech that was published in the *Times* has set himself up in such a position that the opposition will appear at all times when he makes his appearance, because they are treating him not as a Socialist orator but as a Communist.

Q. I understand, therefore, that the applications previously granted for meetings for Communists and Socialists and other undesirables——

A. There was no interruption, Counselor.

Q. No interruption at all?

A. No.

Q. And so I understand that you believe that there is a change in the position of those parties and groups during the last six or eight months.

A. Well, you are familiar with Norman Thomas speaking at that church hall in Jersey City, are you not?

Q. In a rough way I am.

A. During the center of all this controversy?

Q. Yes.

A. You see Norman Thomas injected himself into this picture. I feel that he should never have injected himself into it, because first I think he had no business into the picture and I think it was very foolish on his part to come into the picture, that this was a controversy between the CIO and the Civil Liberties. Now, the first thing I knew he made his application for the church hall; because it was indoors he was permitted and granted. There was no necessity of granting permission; he has under the law the right to talk there, which he did.

Q. He got into the hall?

A. He talked there and there was no interruption. Now, the next thing we heard of Mr. Thomas was after the Burkitt affair then he come over and the application was made by the Socialist Party and the Socialist Party received from the Director of Public Safety a communication denying the application. The following day the Director of Public Safety received a communication from the Socialist Party withdrawing the application and said in this letter that "Heretofore we were never denied a permit before."

Q. Mayor, the letter is in evidence and instead of your saying what it is we will have to let the Judge read it because you and I think it says two different things.

A. I am only giving you what I think.

Q. The thing will speak for itself. There is such a thing as irony in letters.

A. I am only saying that under ordinary conditions there should be no occasion for denying Mr. Thomas if it wasn't for the fact that he injected himself into the picture.

Q. But for the moment you are clear that the Socialist Party should not be allowed to speak in Jersey City?

A. You see, of course, Counselor, I am trying to clarify the situation as best I can; I am trying to show you that it is because of this disorder and all this——

Q. But for the moment to repeat my question you are of the opinion that the Socialist Party should not be allowed to have speakers in Jersey City?

A. Under the head of Mr. Thomas, no.

Q. Under the head of Mr. Thomas.

A. I think the same objection would be filed as heretofore because I think he has disqualified himself, Counselor, as a Socialist leader today, because of his activities in the Communist Party.

Q. As a matter of fact, don't you think you might leave it to the members of the Socialist Party to decide whether he has disqualified himself?

A. I am only discussing with you what I have observed myself from the newspaper photograph and his speech on May Day parade.

Q. Now, Mayor, you don't mean that all people who want to make important, fundamental changes in American life and in the American Constitution are undesirable; you don't mean that, do you?

A. Well, I don't get that question.

Q. Let me put it to you this way——

A. It depends entirely what is their attitude. I don't feel that any group of men who desires to change over forms of government in various cities and states—it depends entirely on the nation, as to how they approach that question. If they approach it with a red flag, I am opposed to it.

Q. What if they approach it peacefully, with any flag?

A. Well, you can't approach anything peacefully, Counselor, if you are opposed to the American form of government and to the overthrowing of it.

Q. That's right. Now, let's assume that a man approaches peacefully a fundamental change in the United States Constitution, a change that you might disagree with, he would be an undesirable?

A. Are you referring to any particular section of the Constitution or the entire Constitution?

Q. The entire Constitution.

A. Well, I have failed to find anyone who desires to do that other than a radical, undesirable man, person, who is——

Q. In other words,——

A. (Continuing.):—who apparently is dissatisfied with the American form of Government.

Q. So if a man wants to have an entire new Constitution written for the United States, the whole instrument, revamped, and even though he goes at it peacefully, do you think that is objectionable, not Americanism, and should be denied?

A. Well, Counselor, I would like to have what you term "peacefully"—I would like to have that interpreted.

Q. Yes.

MR. HERSHENSTEIN: He is answering you.

A. (Continuing.): I don't consider it peaceful——

MR. ERNST: No, he is going to ask me.

And I want you to answer him back.

A. (Continuing.): I don't consider peaceful, approach to a question with a dynamite bomb in one hand and a Red flag in the other.

Q. Now, let's assume a man has a flag of any kind in his hand and does nothing but talk, and never commits what the courts call an overt act. Does he have a right in Jersey City under that definition of peaceful, no overt act?

A. Counselor——

Q. To urge the complete rewriting of the Constitution of the United States? Hasn't he got that right?

MR. HERSHENSTEIN: You mean on the public streets or in halls?

A. Certainly, they have a right to urge complete——

Q. Rewriting of the Constitution?

A. (Continuing.):—rewriting of the Constitution, but it depends, Counselor, who these people are. If they were high-class citizens and they met in peaceful, orderly manner, why certainly they have perfect rights; but if prior to that they were advocating the overthrow of the government, they were dissatisfied with everything that America offered to them, why, of course, I don't assume they have any rights.

Q. You don't? All right.

A. Because they are dissatisfied with the form, to begin with.

Q. And you don't think that they have the right to urge peacefully the change in the form of government?

A. They have no right providing there is opposition and providing there is a great uprising against that type of preaching?

Q. Now,——

A. As a rule, the American people respond very rapidly.

THE COURT: I will have to ask an adjournment. It is not personal, it is the same source I spoke about this morning.

MR. ERNST: All right, sir.

(Short recess.)

Q. Mayor, if there is a picket line in front of a factory and the purpose of the picketing is to organize the plant, under what law have the police or any of the officials of Jersey City the right to interfere with the picket line if it is peaceful?

MR. MATTHEWS: I object to that as calling for a legal conclusion unless the Mayor would know the law.

MR. ERNST: I will change my question.

Q. Mayor, do you know of any ordinance or statute or law of the United States Congress which directly or indirectly gives to the police of Jersey City the power to act in any way whatsoever in connection with a picket line which is marching in numbers of only three, let us say, peacefully in front of a plant where the purpose of the picket line is to organize the factory which at that time is not organized?

MR. MATTHEWS: I object, if your Honor please, that question is too general. The Mayor yesterday testified to Vice-Chancellor Berry's decision, for instance. Now, that would be one phase of it. I think if the Mayor is going to be asked any question as to what the police policy is in reference to picketing it should be in the disjunctive. Vice-Chancellor Berry's opinion, as I read it, forbids picketing in certain instances.

THE COURT: Has that ever been appealed?

MR. MATTHEWS: No, no more than Vice-Chancellor Bigelow's; they are both of novel impression in the state.

MR. ERNST: Your Honor, please, I was referring specifically to whether the Mayor knew of an ordinance, statute of the state or statute of Congress in respect to the power——

A. In a recent case here in Newark, Counselor——

Q. I am asking about statutes; do you know of any statute or ordinance?

A. No, but in a recent Court of Errors decision it is a decided case, the Court of Appeals decided it was illegal to picket only where there is a strike, in the bakery case. It was a bakery.

Q. I know about it, Mayor.

A. Doesn't that apply to us?

Q. I just want to know if you know of any ordinance or statute, not cases.

A. Isn't that state law? Don't we have to abide by the Court of Appeals ruling?

Q. I am asking you if you know of a statute passed by the Legislature, or an ordinance, on the subject.

MR. MATTHEWS: I submit that is the only answer the Mayor could give.

THE COURT: Isn't there a state statute defining twelve paces?

MR. HAMILL: Ten paces, I think that is the law of 1928.

THE COURT: That is the only one I personally know of.

MR. HAMILL: To prevent mass picketing.

Q. Mayor, you may assume that the men were marching strictly in accordance with any pace law enacted by any legislative body in the city, county or state.

A. In the first place, Counselor——

Q. Do you know of any law?

A. Wait, now, I am giving you the law.

Q. No, do you know of a law?

A. Well, I am going to interpret the law.

Q. No.

A. Well, as we knew it.

Q. I will come to that next, Mayor.

A. What is the use of arguing?

Q. You either know of a statute or you don't.

MR. MATTHEWS: I submit all he knows is what the Court of Errors and Appeals has interpreted as the law. That is what he says.

MR. ERNST: Your Honor, may I address myself to you?

A. The rule of the department, Counselor, is that the police, on matters of that character where they necessarily become a nuisance and disturb the peace or interrupt people going in and out of that plant, that is unlawful in our state.

Q. Now, Mayor, may I refer again—I will repeat my question. Assuming there is no annoyance, assume there is no interference, assume that the men are marching, three of them only, peacefully, properly paced according to a state statute, do you know of any legislation ever enacted by the State of New Jersey or by the county boards or the city that gives the police the power to regulate such behavior on the part of the three people where the picket line is for the purpose of organizing an unorganized shop; do you know of any such law?

A. Yes.

Q. What is the law?

A. The law is this, that the owner of that plant, upon the filing of a complaint——

Q. Yes.

A. —the police immediately must inject themselves in and remove the opposition that has set themselves up to disturb the peace and quietness of that plant.

Q. And that is not under a statute, but under decisions of the court?

A. That's the act of protecting life and property.

Q. Yes.

A. That we proceed under.

Q. And so, as far as you know, you are proceeding in those cases under decisions of the court and under legislation, directly?

A. Counselor, it is the same as if at midnight four or five men is prowling in front of a home and the police is notified. Now what do they do? They go there and they remove those men.

"What are you doing here? Who are you? Do you live here?"

"No."

"Then you have got to move on."

Now, that's exactly the law.

Q. Now, Mayor, I didn't ask you anything about that. I asked you a simple question. You understood it fully. I said in effect, and I think I said honestly what I thought you were saying, that you were proceeding under court decisions and not under state statutes or city ordinances.

MR. MATTHEWS: He hasn't said he knows of any state statutes, or he doesn't, and I suppose he presumes, your Honor, that the court must have decided according to the law of the state; therefore the opinion of the Vice-Chancellor must be predicated upon the law of the state.

MR. ERNST: If I may explain the reason without interruption, I would like to explain what I want to get at. Our position is that as a matter of law the police have no power whatsoever, where there is peaceful picketing without disturbance, for the purpose of organizing an unorganized plant, to interfere. But an employer in this state may, under certain circumstances, go to work to get an injunction. That injunctive relief runs to that employer in the particular case,

but the legislative powers of the city and state, as we have searched them, have never vested the power in the police where there is peaceful picketing to organize the unorganized, to interfere with peaceful walking on the street.

THE WITNESS: I think you are in error.

Q. Now,——

THE WITNESS:—entirely in error.

Q. Mayor, I would like you to tell me if I am in error by referring to a statute of the state or an ordinance of the city that gives police that power.

MR. MATTHEWS: That was my objection.

A. Why is it we have been sustained in every court action that we have been called into, Counselor, by the courts?

Q. What?

A. If there is no statute?

Q. What?

THE COURT: I don't want to have a legal argument too much, Mr. Ernst——

MR. ERNST: Yes.

THE COURT:—but isn't it a fact that picketing on a person's premises is permitted—I mean on the city streets, is subject to regulation, unless there is an affirmative law to the contrary, and that the fact is that New Jersey has so far not by its highest courts declared itself on the question of whether you can picket in order to organize? In other words, New Jersey has its law undeclared, whereas the Norris-LaGuardia Act, or the Labor Relations Act, has declared it for interstate commerce. Isn't that a fact?

MR. ERNST: Well, I don't quite see it that way, and I don't want to press the legal argument now, but

what I wanted to have the record show in part was, any statute or ordinance on the subject that the Mayor could refer to?

THE COURT: I don't think there are any. I don't know whether he can refer to them or not.

MR. ERNST: That is my question. Now, as a matter of law, we can eventually argue——

THE COURT: Yes.

MR. ERNST: —whether in the absence of statute the police have any power where it is peaceful. That is the legal issue we are going to differ on.

THE COURT: Yes.

MR. ERNST: May I go on with my examination?

THE COURT: You may.

Q. Mayor, if the evidence shows to the satisfaction of the courts that your police, since the Griffin decision, have taken away circulars and pamphlets from people on the streets of Jersey City, you will agree that the police ought to change their practices and ought to be stopped?

A. We'l, now, Counselor—yes, I agree with that, but can I just make a little explanation about what had occurred at Journal Square——

Q. No.

A. —that you are referring to?

Q. No, that Mr. Matthews can ask you. Now, Mayor——

A. Well, you are arguing about free speech, but you won't give me any free speech.

Q. A court of law, Mayor; it is different than Journal Square. Let me go to Journal Square and I will debate it with you.

MR. MATTHEWS: Oh, you can't go. I will debate it with you, though.

MR. ERNST: In Journal Square?

MR. MATTHEWS: Any place that you want.

MR. ERNST: Journal Square?

THE WITNESS: Wait a minute. Just a minute.

MR. MATTHEWS: Outside, because if I did, I would have to save your life.

MR. ERNST: Do you want me to be saved from Matthews, Mayor?

THE COURT: Do you want me to act as a referee?

THE WITNESS: I will relieve you of that, Judge, too.

Q. Mayor, shall I take him up and debate him in Journal Square?

A. I don't think so. Look out, now; you are taking a tough man.

Q. You can protect me if I come there, can't you, Mayor?

MR. MATTHEWS: Protect you there?

Q. Can't you, Mayor?

MR. MATTHEWS: I don't think the United States Army could protect you in Journal Square. You would be as welcome as a skunk at a lawn party over there.

Q. You will protect me if I come over in Journal Square, won't you?

A. No.

Q. You won't?

A. No.

Q. All right.

A. The whole country would turn out.

Q. Very flattering.

MR. MATTHEWS: No, that isn't flattering, Morris.

MR. ERNST: Well, I should think so.

Q. Mayor, you are disturbed about the fact that your duty primarily is to maintain peace and safety in the community?

A. (The witness nodded.)

MR. MATTHEWS: I object to the word "disturbed"—he isn't disturbed about it; he is concerned.

MR. ERNST: He is concerned with it.

Q. Is that right, Mayor?

A. (The witness nodded.)

Q. Now, Mr. Mayor, you are of the opinion that that peace and security cannot be maintained if certain people whom you termed undesirables, are permitted to come into Jersey City because they would offend, as you used the word "offend," the people of Jersey City?

A. (The witness nodded.)

Q. The answer is yes?

A. It would disturb them. It depends upon the people.

Q. Yes, certain people. Now, Mayor, isn't it a fact that the people of Jersey City might also be disturbed and offended by the passing around of the same ideas that the speakers would use if instead of in oral form, by word of mouth at a meeting, it was passed in printed form? That could also offend the people of Jersey City, couldn't it?

A. Oh, yes. It depends upon what is printed.

Q. Now, let's assume that the undesirables who you think will offend the people of Jersey city put their words into printed form and passed them around in Jersey City by the thousands, that might create a real disturbance?

A. No, I think they would be a little more safeguarded in putting it in print than what they would utter upon the public platform.

Q. You think they wouldn't say the same things?

A. I think they would frame it in such a way that it would be acceptable.

Q. Now, Mayor, when you deny a permit for a man to speak you don't know what he is going to say, do you?

A. No. Of course, we know generally what the subject is, as to who he represents and what cause he is speaking for; we know then just what the nature of it is.

Q. Now, if these same people, instead of applying for a permit where you know the general purpose of the cause and the group that they are affiliated with, instead of getting a permit to speak what is on their minds, should go ahead and put in it printed form, isn't it possible the safety and calm and comfortable living of the people of Jersey City from your point of view might be equally disturbed?

A. Not necessarily, Counselor.

Q. Not necessarily; isn't it possible?

MR. MATTHEWS: Possibilities aren't admissible.

A. In the distribution of circulars, they are distributed in the one place; they don't take them, they pass them by; secondly, the newspapers don't pass comment on the distribution of circulars, they only comment upon the appearance of certain people, and it seems, from their articles after they publish them, the movement takes place and up goes the uprising and from there she starts.

Q. Now, let's assume the Communist Party, for example, instead of applying for a permit to speak had printed its documents, its position, whatever it is, and passed them around, they could lead to some disturbance in Jersey City?

A. It would, it would lead to disturbance on the premises where they were being distributed because they would resent it, people as they would be handed these circulars would resent it, and on their way back, if they tried to give them another, would say, "Get out of here" and of course that leads to trouble.

Q. And there would be protests filed with you?

A. That has happened, that is exactly what has happened?

Q. There would be protests filed with you?

A. There would be protests filed with the officer on post.

Q. And eventually there would be a mass protest filed with you?

A. There would be—there would be a lot of complaints filed with the police and eventually it would reach me.

Q. If you had a number of those complaints and protests you would feel it your duty to stop this process of handing things around in printed form that offends the people of Jersey City?

A. Not under the present law, we would try to regulate it, we wouldn't stop it; if the people was distributing the circulars we would try to remove them if they was obnoxious and was causing disorderly scenes and insulting people.

Q. Let's assume that you get thousands of protests, somebody announces he is going to distribute a lot of material, a group that you think is clearly undesirable, a group that you think offends the people of Jersey City, they announce that they are going to distribute pamphlets all over Jersey City and you get a copy of it——

A. And they were becoming a nuisance?

Q. No—wouldn't you even before it became a nuisance, wouldn't you think it wise to try to stop the distribution?

MR. MATTHEWS: I object, that has no relevancy to this issue; that is not the issue here. There is no evidence in this case of thousands of people peacefully giving innocuous circulars. The only testimony about thousands of people was the threatened invasion by Carney that they were going to bring.

THE COURT: Wasn't the word "thousands" used?

(Question repeated by the reporter as follows:

"Let's assume that you get thousands of protests, somebody announces he is going to distribute a lot of material, a group that you think is clearly undesirable, a group that you think offends the people of Jersey City, they announce that they are going to distribute pamphlets all over Jersey City and you get a copy of it——")

THE COURT: You may answer.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly. (Sealed)

MR. ERNST: You have ruled, your Honor, that he may answer?

THE COURT: Yes.

Q. Would you try to stop that?

A. Would I stop that distribution of circulars under those circumstances?

Q. Yes, under those circumstances.

A. I presume that would lead to a complaint which would find itself into the disorderly conduct and from there we would have to make an arrest.

Q. But you would make no effort to stop it in advance?

A. If it become disorderly enough.

Q. But in advance you wouldn't try to stop it?

A. Not in advance of disorder, no.

Q. Now, Mayor, just two other questions, unless we get into difficulties between us.

A. Is that all then, those two?

Q. Unless you make me ask them in four forms, very simple. Among the members, the leaders of the American Labor Party, whom you have termed in general terms as undesirable, I find the name of Fiorello LaGuardia, Mayor of the City of New York, and I ask you whether you mean to imply, as you intimated the other day, that the leaders of the American Labor Party, as well as the leaders of the CIO and the ACLU, are undesirable, would offend the people of the city and should not be allowed the right to speak.

MR. MATTHEWS: I object.

A. The Mayor is not a leader, the Mayor is a member of your party; he enrolled as a member. Do I understand that—not as a leader.

Q. Well, you don't enroll as a leader, I take it; you are elected in New York as a leader.

A. No, no, now, he enrolled in the Labor Party; is the newspaper comment correct?

Q. I am saying to you that he is a leader of the American Labor Party.

A. Well, I am saying to you that the paper informed me by the news article that he had enrolled.

Q. That's right. Now, let's assume that he is enrolled, and in addition, event he is one of the leaders, what is your answer to the question?

MR. MATTHEWS: I object as irrelevant to this issue. I don't think he should be called upon to characterize Mayor LaGuardia's politics because as I remember Mayor LaGuardia's politics he has four or five different parties.

MR. ERNST: I will accept the characterization by Mr. Hague's counsel.

THE COURT: He seems to be fairly successful.

MR. MATTHEWS: Yes, he is getting along pretty well, Fiorello is.

Q. One other question. One other question. That's grand. I understand, Mayor, that your philosophy of government is that if the majority of the people in your community, as your appraise their desires——

A. Yes, sir.

Q. —find a person offensive to them, somebody of a minority group, you protect and respect the wishes of the majority of the people?

A. Well, now, I don't get that, Counselor.

Q. Let me put it to you this way——

A. Will you clear that?

Q. Will you let me, because I hope it is my last question, state it in a form so that you can answer it fully.

As I understand your position from the record, if you find that a majority of the people, a substantial number of the people of the community object to the presentation of a point of view of somebody who is in the minority, a point of view that offends the majority of the people——

A. Are you referring to the local situation?

Q. Yes, the local situation. You then respect the wishes of what you sense to be the majority and you, in response to their protests, indicate that the people against whom they are protesting should not be allowed to come in and speak?

MR. MATTHEWS: Now, just a minute.

Q. Let me just go on and get my question; I think it would simply matters.

MR. MATTHEWS: It is a very long question.

Q. What I am getting at, the basic thing that worries me about the whole case——

MR. MATTHEWS: I don't want him to be worried.

Q. —concerns me for America——

MR. MATTHEWS: What America, North or South?

MR. ERNST: Your Honor please, may I continue without interruptions?

MR. MATTHEWS: Excuse me, Morris.

MR. ERNST: A court of law, I thought.

MR. MATTHEWS: New Jersey.

Q. I am very serious, Mayor, and you will have no difficulty in understanding me if your counsel won't interrupt me.

A. I would like to answer your question.

Q. He won't let you answer it.

A. As you have framed it up, because it treats with a minority.

Q. May we start in over again? Thanks to your counsel.

MR. MATTHEWS: You are welcome.

A. I know your question, Counsel.

Q. No, because I haven't even touched the question, I am just getting the premise, if Mr. Matthews has patience to ask him questions later.

MR. MATTHEWS: Patience!

Q. (Continuing.) As I understand your position, it was if a substantial number of the people in the community where you govern protest against any one of a group of people whom you term undesirable and you honestly believe they are undesirable, you give weight to those protests; you have said you don't want to offend the decent people as you see it in the community, you say it would offend that great body of people, as you sense it, in the community if these undesirables were allowed to come in and speak at street corners. Now, sir, if you prefer me to ask in detailed questions I will but I think you will get the point and then you can answer it. You and I are both members of great minority religious groups in the United States.

MR. MATTHEWS: I object.

Q. Just let me finish my question; I will tie it up.

THE COURT: Leave out the religious minority groups.

Q. Let's be frank in America; one of the things in the Constitution is the guarantee of it and I must mention it, your Honor—you can strike out the whole question if you see fit—one of the distinctions between the United States and Russia and the dictatorships of the world is religious freedom. You and I know that historically in this country there have been things like the Klan and the attacks on the Quakers before it. Now, this is the point of my question: If you as the mayor of a city, assuming complete integrity on your part, are permitted to use your judgment on the basis of protests as to what will offend and what people are allowed to speak or not, isn't there a tremendous danger to Americans that we will have a revival of mayors elsewhere in the country who will think that other minority groups than the ones that you are afraid of, that you worry about, are equally dangerous and they will put it not on the basis of the overthrow of government, they will put it on the basis

of the overthrow of the home or something else, won't they then logically have the right to follow Frank Hague in getting up in another city and saying "I don't mind the people who are going to preach revolution but I mind the people who worship certain gods and they are disruptive of America," and they have said it in our lifetime, Mayor Hague, "and I am not going to let them speak at meetings or worship as they see fit."

MR. MATTHEWS: I object to that question. That's incompetent.

MR. ERNST: I think the Mayor understands my concern.

MR. MATTHEWS: No, no.

Q. If you don't Mayor, I can amplify it. I have been perfectly honest with you. I think that the example of your philosophy of government is the denial of Americanism, because it will be followed God knows where, in violation of religious and economic and political freedom.

MR. MATTHEWS: I object to that question.

Q. Now, do you want to answer my question, Mayor?

THE COURT: Do you want to answer it?

MR. MATTHEWS: There is no need of answering such a question.

THE COURT: Well, wait a minute. Let's see whether your client wants to answer it or not.

MR. ERNST: If he wants to; I don't press him.

THE WITNESS: I will leave it to my counsel, Judge.

THE COURT: All right.

MR. ERNST: I won't press him, if it is a question he doesn't want to answer.

MR. MATTHEWS: It isn't a question of "he doesn't want to answer." The question is not a question; it is a speech; it is a cheap appeal.

THE COURT: Please, Mr. Matthews.

MR. MATTHEWS: Well now, your Honor, let's take what he said here. He speaks of himself as a minority group.

THE COURT: Well, don't do that if you don't mind.

MR. ERNST: You need not try to protect me, your Honor. It is only the dignity of the court. I take no exceptions to remarks of Mr. Matthews. The record will show the mood of Mr. Matthews.

MR. MATTHEWS: The dignity of the court is not enhanced by you, sir.

MR. ERNST: If your Honor please, does your objection—I take it you sustained the objection?

MR. MATTHEWS: I object.

THE COURT: I think legally speaking the objection is good.

MR. ERNST: I wanted to know, your Honor, so I won't waste the time of the Court, whether the objection is to the fundamental purport of the inquiry or whether I should cure it by breaking it up into twenty separate questions.

MR. MATTHEWS: Objected to as irrelevant and incompetent.

MR. ERNST: Do you think it goes basically——

MR. MATTHEWS: Irrelevant and incompetent.

MR. ERNST: I bow and take an exception if your Honor sustains the objection. I wanted to know whether the objection, your Honor, is sustained—I take it you sustained the objection in its form at least?

THE COURT: Well, I shall have to sustain it on technical grounds, anyway, I think.

MR. ERNST: Yes. May I ask the guidance of the Court, so as not to waste time, whether the objection is to the basic purport of my question, so that I could split it up into ten or fifteen separte ones easily, or whether it goes to the form. If it goes basically to the purport, all I will do is take an exception and turn over the witness to his counsel.

THE COURT: I would like to know the reason. Is your reason, Mr. Matthews——

MR. MATTHEWS: Because it is incompetent, sir.

THE COURT: Well, that is after all——

MR. MATTHEWS: Incompetent to this issue.

THE COURT: Will you read the question, so I can be sure.

MR. ERNST: When the qustion is read, may I ask that my introductory apology for the form of the question be read, because I wanted to get this issue before the Mayor, and instead of piecemeal I wanted to get in the whole proposition. The Mayor may wish to overrule his counsel or not.

MR. MATTHEWS: The Mayor is not taking any advice or wishes from you.

May I cross-examine?

THE COURT: No, wait until we got the question.

MR. ERNST: If your Honor please, we might save a moment's time. I have a request to make. I have one witness that I would like to ask two or three questions at most. It is Mr. Callahan, of the Catholic Worker Association, and I wondered whether counsel would consent to have him, or the witness would consent, to have this representative of the Catholic Worker go on for three questions?

MR. MATTHEWS: No, if your Honor please.

MR. ERNST: He has been here for two days. It is merely to identify the man he spoke to in Mr. Casey's office.

MR. MATTHEWS: Well, if that is the only question, do you identify such and such a person, I have no objection to that being asked. He may be sworn right now.

MR. ERNST: No, no identify him as to his return and tie it up with the other employees.

MR. MATTHEWS: No, I must object to that. I am entitled——

MR. ERNST: You will not do me the courtesy of that?

MR. MATTHEWS: It isn't a question of courtesy, Mr. Ernst. It is a question of examining the Mayor now, who is the Mayor of the city, and has been here for four days.

MR. ERNST: All right, that's all right, if you please.

THE COURT: Now, may I have the question?

(Pending question read by the reporter.)

THE COURT: I think there are parts of that question, Mr. Ernst, I would admit, but as a whole I won't permit it. There are parts of it that I think are admissible.

MR. MATTHEWS: I object as incompetent.

THE COURT: I sustain the objection therefor.

MR. ERNST: I take an exception.

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

MR. ERNST: Your client, your witness.

THE COURT: Do you want to adjourn now, Mr. Matthews, for ten minutes instead of at three o'clock?

MR. MATTHEWS: Yes, all right.

(Short recess.)

(After recess.)

MR. FRAZER: May I tender to the Court our felicitations upon the news which we have just heard of your Honor's confirmation to the Circuit Court of Appeals?

THE COURT: I thank you very much, Dean, and I again apologize for my repeated absences, but you understand them, I am sure.

MR. FRAZER: Yes indeed.

MARSHAL MCDERMITT: I don't think the audience heard a word of Mr. Frazer's address to you. Should they be advised?

THE COURT: I don't think so.

I suppose technically I ought to receive the designation right away, shouldn't I? Do you waive it?

MR. FRAZER: We will take the official report, sir.

MR. MATTHEWS: May I, too?

THE COURT: Indeed you may.

MR. ERNST: If your Honor please, I have a suggestion I would like to make leading to a motion which I think will save an endless amount of time. We have discussed with you heretofore our intention to move to quash various subpœnas that are outstanding. I should imagine that the examination of the Mayor will take the rest of the afternoon, and then maybe we will want him back tomorrow. I don't believe it will be any great inconvenience to the Mayor if we could argue the question of the subpœnas duces tecum now for this reason. In our opinion those subpœnas will have to be quashed.

Then, with all deceny to opposing counsel, they will have to have time to draft or endeavor to draft new subpœnas. The questions involved in the discussion as to the subpœnas duces tecum, which impinge directly on the defenses interposed in this action, will no doubt also be raised in connection with the cross-examination of Mayor Hague.

I should imagine that having delayed for one or two days already the matter of the motion on the subpœna, I now urge the Court to save us all time and confusion to dispense with that, which will be, I assume, entirely agreeable to the Mayor,—and he would probably have to come back anyway tomorrow and it will not put him out and may save an awful lot of time for everybody.

MR. MATTHEWS: We are not prepared to argue that this afternoon, your Honor, we haven't got our law arranged on it, it is not with me, it is at my office. More than that, I was going to suggest that a sitting down with counsel may lead to our agreeing on some general terms of the subpœna that can be changed, but the data that we want in accordance with the subpœna, if that is not agreeable, we would be glad to submit to the court with the reasons therefor. I would like now to continue with the cross-examination of the witness.

MR. ERNST: Your Honor, you will find that on the examination, the contours of the defense will have to be defined within the limitations of the questions which go to the subpœna. Now, as to sitting down with counsel, our position, not out of disrespect for Frank Hague but because of the treatment which we have received from Mr. Matthews in the case, does not prompt us to accept his kind offer and we will not sit down to tell him what kind of subpœna he can draw which would be acceptable.

THE COURT: Can I make this suggestion, that I shall have to get a designation which I will do overnight——

MR. MATTHEWS: A what, your Honor?

THE COURT: A designation to sit, which I will do overnight, from Judge Davis, as he is the presiding Judge, and would it be fair then to say that we could adjourn now?

MR. ERNST: And tomorrow morning we could argue the subpœna point and then go on with the Mayor when we are finished.

MR. MATTHEWS: I want to continue with the cross-examination of the Mayor.

THE COURT: Well, Mr. Ernst pointed that he thinks the cross-examination of the mayor might be shortened.

MR. MATTHEWS: Oh, that is not for him to say.

MR. ERNST: Your Honor please, not only shortened but the argument on the subpœna was set for two or three days ago, so obviously there can be no surprise, and I ask it as a matter of convenience in the entire trial.

MR. MATTHEWS: I submit that I ought to be allowed to continue with the cross-examination of the Mayor. I realize that they don't want me to ask the Mayor on cross-examination the questions that they refused to ask him when they were pleaded with by the Mayor to ask. Now, your Honor is perfectly completent to rule—the subpœnas have nothing to do with my cross-examination of the Mayor, he is their witness. I submit for the convenience of the court—I mean not the convenience, the designation situation, of course I wouldn't stand for a moment in the way of that; whatever your Honor wishes I am agreeable to.

THE COURT: I think I should have it; I didn't think it would be quite lucky to get it in advance.

MR. MATTHEWS: That's all right, Judge, but——

MR. ERNST: Can't we settle the question of the subpœnas this afternoon? I mean not settle them in argument but settle whether we will have an argument.

MR. MATTHEWS: I am perfectly willing so long as I am as detestable to Mr. Ernst as he visibly is to me, much less orally, I will be glad to have my confreres sit with him, because after all, Judge, I never seek the association of those that I don't like. In Christian charity, of course, he is my neighbor but glory be to God in Heaven, that covers a multitude of sins. I am perfectly willing he should confer with Jim Hamill and Ed O'Mara and Charlie Hershenstein, because after this case is over I shall have only a memory of him, like I have of others that I have met in court, something to be forgotten because it isn't worth being remembered.

THE COURT: Well, can't——.

MR. MATTHEWS: But the point is——

MR. ERNST: If your Honor please, I want to make sure this on the record. Have you got this on the record?

THE COURT: Oh, yes, everything said is taken down here.

MR. ERNST: It is on the record. I want it on the record.

MR. MATTHEWS: That's good. Then you can read it to your progeny.

MR. ERNST: The upper judges will read it.

MR. MATTHEWS: Yes, I will be glad to have the upper judges read it, if they don't know of you already;

but I think this country does since the trial began. But the point is this, that any argument on the subpœnas would interrupt the Mayor's cross-examination, and I am all ready for it; I could go on now. But under the circumstances I think we ought to adjourn now. As you say, I don't think I ought to be compelled——

THE COURT: Well, my suggestion then is, I think the subpœna argument, which, I agree with Mr. Ernst, is vital to the case ——

MR. ERNST: There is no question about that.

THE COURT: Because I think that my rulings there will have to shape what I think is a permissible defense——

MR. MATTHEWS: I am not interested in defense, I am only going to cross-examine a petitioner's witness.

THE COURT: Wait a minute, Mr. Matthews. Therefore may I suggest that we go on with the Mayor tomorrow and then—have you other witnesses? I saw Mr. Thomas in court.

MR. ERNST: No, we have one witness, Mr. Callahan, from the Catholic Worker.

THE COURT: And that's all?

MR. ERNST: And that will be all.

THE COURT: Well, then can't——

MR. ERNST: Assuming, however,—we had understood that the argument on the subpœnas would take place a few days ago.

THE COURT: Excuse me one minute. This will be the last time I shall interrupt you.

MR. ERNST: All right, we understand.

(Short recess was taken.)

THE COURT: I am wondering, couldn't we do this? Couldn't we have finished the complaintants' case and then immediately after that, Friday afternoon, if necessary Saturday morning,—well, it is probably too late in the summer for Saturday morning, isn't it? But anyway, right following this settle the subpœna issue?

MR. MATTHEWS: Why, I don't think I ought to be prevented from cross-examining——

THE COURT: No, after the cross-examination.

MR. HERSHENSTEIN: After the cross-examination.

MR. MATTHEWS: That is all right. I am perfectly willing, Judge Clark.

THE COURT: After the cross-examination.

MR. MATTHEWS: Yes.

THE COURT: Is that agreeable then?

MR. ERNST: Yes. I still think it would save a lot of time on the objections to cross-examination, which we can more than guess by the remarks of Mr. Hague's counsel, interpolated between my questions. You will have to in effect make the same determinations as on the subpœnas.

MR. MATTHEWS: Oh, that doesn't follow at all.

MR. ERNST: Now, moreover, your Honor——

THE COURT: I am inclined to that view myself, but I don't think——

MR. ERNST: That's why I thought we should have the argument on the subpœnas before.

THE COURT: I don't feel I can control counsel, that's all.

MR. ERNST: Yes. May I say also, so there will be no misunderstanding, and I was interrupted in the

middle of my answer, that the number of additional witnesses that we put on will also, of course, depend on the determination which underlies the questions of the subpœnas. For example,——

THE COURT: Oh, well then——

MR. ERNST: We are going to have to re-offer, of course, now, in view of the Mayor's statements and testimony, the testimony previously proffered in respect to the meeting in Mr. Egan's office in Newark, and the tie-up with the Hague group in Jersey City. Moreover——

MR. MATTHEWS: I object to all these statements.

MR. ERNST:—to the extent——

MR. MATTHEWS: If they have any more case, let them put it on.

MR. ERNST: That's right.

MR. MATTHEWS: Let them put on anything they want to. We are perfectly willing to meet it. This is a statement for the morning papers he is making now.

MR. ERNST: If your Honor please, may I finish?

THE COURT: Go ahead.

MR. MATTHEWS: No, I object to that.

MR. ERNST: I forgot to say originally without interruption——

MR. MATTHEWS: I object to that.

MR. ERNST: Moreover——

MR. MATTHEWS: I object to that.

MR. ERNST: Moreover, your Honor, the cross-examination will of necessity be limited to the confines of the defense permitted——

MR. MATTHEWS: Oh, it will be limited to the direct.

MR. ERNST: All right. There can be cross-examination of a direct, which stays within the confines of a defense, and which does not. An important thing for the orderly procedure in my opinion is to determine the confines of the defense. I assure you you will be faced, from the remarks made by Mr. Matthews heretofore, it is very evident, you will be faced immediately with the necessity of ruling on the confines of the defense.

MR. MATTHEWS: I will examine according to the direct testimony; I will cross-examine this witness. They offered him now; he is my witness now; and whatever I will do I will do according to the rules of evidence; you can be sure of that.

MR. ERNST: I didn't suggest that you wouldn't, Mr. Matthews, I merely suggested that it was expedient and an orderly process to have a determination on the subpœnas as we had agreed on for three days ago.

THE COURT: Of course, I think this, Mr. Matthews, the subpœnas, as I understand, from references to them, are rather all-inclusive.

MR. MATTHEWS: They are inclusive but they should bring here the records.

THE COURT: If they have to be answered they will take quite a bit of answering, I mean the production of documents.

MR. MATTHEWS: If they are competent subpœnas, your Honor, that's all right, I will stay here.

MR. ERNST: Your Honor, may I say this, because I think it will save endless time: In our opinion the subpœnas, and I do not intend to argue the subpœnas, the subpœnas on the face of them must be quashed. We will not then proffer to Mr. Matthews suggestions as to

what the subpœnas should contain, but then when he has prepared new subpœnas, after these must inevitably have to be quashed under the law, we will then have to argue the new subpœnas, and the point as to the extent of the subpœnas, but inevit v the issue will come down to the question of wha es of their defense do they rest on for admissi' ty.

MR. MATTHEWS: Oh, your Honor! Don't tell me how to try a case, a fellow like you.

MR. ERNST: I am addressing the Court, sir.

THE COURT: Mr. Matthews, please——

MR. MATTHEWS: Well, your Honor, he is virtually saying how I shall try my case and how I shall cross-examine my witness.

THE COURT: But then you retaliated with personal remarks.

MR. MATTHEWS: I know, your Honor, but it is tantalizing to have a man stand in front of these people and tell me what to do.

THE COURT: Sometimes it is tantalizing to me to have them here but I hope I control it.

MR. MATTHEWS: You have, sir, and I am grateful to you, I am sorry if I have offended. But the point is, your Honor please, give us credit for being able to cross-examine our own witness. They have made their bed by calling this witness, they will have to lie in it while I cross-examine them.

MR. ERNST: I am not objecting to the cross-examination. As a matter of fact, sir, I welcome it. But may I say, sir, we had other witnesses we intended to put on, Mr. Matthews has seen fit to subpœna them to come here; we will probably not put any of them on and let him put them on.

MR. MATTHEWS: That's fine, that's first rate.

MR. ERNST: There is no question of our not wanting him to cross-examine Mr. Hague.

THE COURT: Mr. Matthews, I think I shall have to insist that on Monday we argue the subpœnas because we must get that settled; otherwise we might be here all summer.

MR. MATTHEWS: I agree that we shall argue that on Monday.

(At this point an adjournment was taken to Friday, June 17, 1938, at 10.30 A. M.)

Friday, June 17, 1938.

Case continued.

Appearances as before.

THE COURT: Are you ready?

MR. MATTHEWS: Yes, your Honor. Good morning. May I proceed now, your Honor?

THE COURT: Yes, you certainly may.

FRANK HAGUE, resumed the stand.

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Mr. Mayor, at page 1223 and 1224 of your testimony you spoke of a threat by Harry Bridges ordering five hundred of his strong-arm men into Jersey City and you said "Bridges is a noted Communist," and also at page 1682 and page 1683 of your testimony you named Bridges as an undesirable CIO leader. Will you tell me on what you base your information as to Mr. Bridges?

MR. FRAZER: Now, just one moment. If this is offered as substantive testimony it is wholly objectionable.

THE COURT: If what is offered?

MR. FRAZER: If it is offered as substantive testimony.

THE COURT: What is offered, Dean?

MR. FRAZER: The evidence now sought to be elicited.

THE COURT: Is it some document, is that it?

MR. MATTHEWS: I am asking him the source of the information.

THE COURT: I say is it some document?

MR. MATTHEWS: Yes, sir.

THE COURT: Let me see the document.

MR. MATTHEWS: This is cross-examination and I have every testimonial record.

MR. MATTHEWS: This document is a national Republican document with quotations——

MR. FRAZER: Will you speak so I can hear you, Mr. Matthews?

MR. MATTHEWS: This document is a national Republican magazine document with quotations, New York *Times*, other newpapers, the Seattle *Post Intelligencer* and other data, to give the Court the reasons upon which Mayor Hague predicated his opinion briefly.

MR. FRAZER: You are merely trying to prove the Mayor's state of mind?

MR. MATTHEWS: I am trying to prove nothing by the Mayor; he is under cross-examination. I am cross-examining him on his exact testimonial statements with

reference to the page of the record. I won't use anything, your Honor, except what is consonant with his testimonial statement in the record, and I will give you the page of each bit of testimony that he gave.

THE COURT: Well, this seems to be a long article.

MR. MATTHEWS: No, you misunderstand me. I will mark the place for you, if you want me to, where I want to read.

THE COURT: Yes, but I want to know what the article is about.

MR. MATTHEWS: It is about Bridges, your Honor.

THE COURT: Wait a minute. I have got an even better one, I think.

MR. MATTHEWS: Well, maybe I will take your Honor's.

THE COURT: Yes. Have you seen mine (handing to Mr. Matthews)?

MR. MATTHEWS: No. About Bridges?

THE COURT: Yes, I know, but this is about all the same people.

MR. MATTHEWS: Now, if your Honor pleases, I just want to confront the Mayor with what he said, and, under cross-examination, ask him the questions that I am entitled to under cross-examination.

THE COURT: My pamphlet, which was sent to me anonymously, is by one Harrison Fargo McConnell, counsel for the Silver Shirt Legion of America, Incorporated.

In other words, Mr. Matthews, there are numerous publications, are there not, which give alleged references to Communists and that sort of thing?

MR. MATTHEWS: That isn't my purpose, Judge Clark. I want to give quotations from this man

Bridges, on which Mayor Hague predicated his opinion that Bridges is a Communist.

THE COURT: You are purporting to quote Bridges.

MR. MATTHEWS: Yes, your Honor. Not purporting actually quoting Bridges.

MR. FRAZER: But this is purely hearsay, absolutely hearsay, if he is going to try to prove things which Mr. Bridges said.

MR. MATTHEWS: No, no.

MR. FRAZER: Then he has to have Mr. Bridges here or some proper proof of it, not a publication.

THE COURT: Let me look at it again exactly to see how it is quoting him.

MR. MATTHEWS: Then I will give you a photographic copy of this.

THE COURT: Is this the quotation?

MR. MATTHEWS: Yes, your Honor, that is the source; I have given you the source, the photostatic copy of the quotation.

THE COURT: Is it a quotation by Mr. Bridges advocating the overthrow of the Government by violence?

MR. MATTHEWS: Just a minute, Judge Clark.

THE COURT: Does it? Just a minute. I am not asking that invidiously.

MR. MATTHEWS: May the record show the Judge's question to me because this is very important for the defense in this case. The purpose of this question is to cross-examine Mayor Hague upon statements which I have read from the record.

THE COURT: Well, I understood the Mayor's position to be that certain of these persons advocated the overthrow of the Government by violence, do I?

MR. MATTHEWS: Bridges is one of them.

THE COURT: Then it seems to me that question is pertinent if that is the case.

MR. MATTHEWS: I may have misunderstood you; if I did I am sorry.

THE COURT: I asked if he was in this question advocating the overthrow of the Government by violence, that is what I asked. Does he?

MR. MATTHEWS: Yes.

MR. FRAZER: I understand the Mayor is being cross-examined on his state of mind. That is the only thing which this question relates to.

MR. MATTHEWS: He is being cross-examined upon his statement in direct. Now, might we not have it right in the beginning, your Honor; to attempt to close the door to the Mayor of Jersey City in this case in this fashion would not only be inequitable but unjust. I have quoted his testimony. I have asked him a question, "In answering that question did you have before you this?" And there is the statement of Bridges which shows that the Mayor had a right to fear a man sending five hundred men into Jersey City, who would be guilty of such——

THE COURT: I will allow the question.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: May I get those things now, your Honor, please?

THE COURT: Yes.

Q. I show you a pamphlet and particularly a quotation from Harry Bridges. May I read it to you?

MR. FRAZER: No, no. Now, a quotation from Harry Bridges, that is an assumption of a fact which is not proven. A printed statement which is alleged to have been uttered by Harry Bridges is another thing.

Q. I show you also the Seattle *Post-Intelligencer*, of May 15, 1937, and ask you to look at that and say is that the same statement that I show you in this pamphlet.

MR. FRAZER: Just a moment, I have made an objection to one of the statements of counsel I didn't see that it was ruled upon or changed by counsel. I object to counsel's statement that he shows a quotation from Bridges.

THE COURT: It certainly would have to be "a newspaper article purporting to quote Mr. Bridges."

Q. All right, then, forget for the moment the pamphlet I showed you, and I ask you to look at that in the dimming light here, if you can see it, and say if you have seen that before.

A. Yes, sir.

Q. I hold in my hand the Seattle *Post Intelligencer*, photostatic copy of it, of May 15, 1937. I am sorry, I will have to have better light to read, if I may. "The end of the employing classes——"

MR. FRAZER: Now, just one moment. What are you reading from?

MR. MATTHEWS: The Seattle *Post Intelligencer*, May 15, 1937.

MR. FRAZER: I object to the admission or the use of this instrument. There is nothing in it which indicates that it is from any such paper at all except some kind of a written note on it.

MR. MATTHEWS: I represent to the Court that that is a photostatic copy of an article from the Seattle *Post Intelligencer*.

MR. FRAZER: I object to the use of it.

THE COURT: Of course, Mr. Matthews, if that objection is to be made you will have to have more proof.

MR. MATTHEWS: Why, just a minute, Judge Clark. Do I understand now that you are going to close the door——

THE COURT: Please, Mr. Matthews.

MR. MATTHEWS: Pardon, your Honor?

THE COURT: Please.

MR. MATTHEWS: Oh, excuse me.

THE COURT: You don't have to raise you voice so much. I said that it is a fact, of course, that we will have to know that that is an actual photostatic copy, if Dean Frazer questions it. That is, of course, a fact under the law of evidence.

MR. FRAZER: I might call the attention of the Court to the fact that there had been an alleged paper of Senator Smathers offered under similar conditions and it was objected to.

MR. MATTHEWS: I object, it was nothing of the kind; it was a typewritten statement, and your Honor said he might be produced.

Now, all during this trial there have been produced before your Honor in the petitioner's case newspaper accounts. The question pending before your Honor, so you may not lose sight of it, is that the Mayor has testified that Bridges threatened to come into Jersey City with 500 of his strong arm men and he said Bridges was a noted Communist. At page 1682 of the testimony, he named Bridges as an undesirable.

"Will you tell me upon what you based your information as to Bridges?"

THE COURT: I understand that; that isn't the question before the Court. The question is whether a sheet of paper with print on it in white is a photostatic copy of the article. Now, I don't know whether it is.

MR. MATTHEWS: I represent to this Court——

THE COURT: Dean Frazer says that he insists upon proof.

MR. MATTHEWS: I am not asking you to take anything he says. He is interrupting——

THE COURT: Wait a minute, Mr. Matthews.

MR. MATTHEWS: I wouldn't offer you anything except——

THE COURT: Wait a minute, Mr. Matthews.

MR. MATTHEWS: Except what I have already——

THE COURT: Mr. Matthews, if Dean Frazer doesn't want to take your word for the fact that it is a photostatic copy, nothing in the world can compel him to.

MR. FRAZER: If this photostatic copy was shown to the Mayor, it is another matter—if it was a photostatic copy; but I object to any statement as to what the copy is from. There is a handwriting obviously not Mr. Matthews' with which I am very familiar. He knows no more about that——

MR. MATTHEWS: I represent to you, Spaulding——

MR. FRAZER: You can't represent something you don't know, Mr. Matthews.

MR. MATTHEWS: Just a minute. I know this to be true.

Q. Mr. Mayor, I will ask you a question: Do you know who made that photostatic copy?

A. It was made in Jersey City.

Q. Yes. And of what paper, do you know?

MR. FRAZER: Oh, I object. Oh, what was it a photostatic copy of?

MR. MATTHEWS: Yes, of what paper was it a photostatic copy?

A. The Seattle *Post*—I can't read this here.

Q. Well, do you know that that is true, that it was taken from the Seattle *Post Intelligencer*?

A. Yes, yes.

MR. FRAZER: Well, now, just ask how does he know that?

A. (Continuing.) I was trying to distinguish this writing.

MR. FRAZER: You get your information from the writing, don't you, Mayor?

THE WITNESS: No, no. I got my information from a thorough investigation of all these papers that I went over and that I had studied, in my efforts to try to prove to this Court just who these characters were. I have no other way of showing who they are. I assure you that is a photostatic copy of the paper that was presented to me.

THE COURT: Mayor, how did the Seattle *Post Intelligencer* get to Jersey City?

THE WITNESS: Because we took it upon ourselves, your Honor, to write to Frisco, to write to wherever all these disturbances took place, and ask the police authorities and the governing bodies to forward to us whatever information they had concerning the groups of men who created all this disorder.

THE COURT: What date is that? I mean when you say you wrote, what date was that? What date did you write?

THE WITNESS: I don't know just offhand, Judge. We communicated with everybody. We can show you communications from any city where any disorder has taken place, where the CIO was involved, and where the Civil Liberties has entered into these pictures. They are suing me, they are the groups that questioning my sincerity.

MR. FRAZER: I assume that these came in the form of clippings from the different papers?

THE WITNESS: I have no other way of producing any facts, if I am not permitted to produce them in this manner.

THE COURT: Well, what is the date of that?

MR. MATTHEWS: May 15, 1937, your Honor, prior to the Bridges threat in Jersey City.

THE COURT: The article?

MR. MATTHEWS: Pardon me?

THE COURT: The article?

MR. MATTHEWS: Yes, your Honor.

THE COURT: Well, do you still object?

MR. FRAZER: Yes. I have no way of knowing that this is from the Seattle paper. If the Mayor wishes to be shown this photostat and asked whether he had seen this photostat, and that was the basis of his ideas, I have no objection to that; but to have it stated to have been published in the Seattle—whatever the name of it is—without any proof to that effect, I object to that. I object to the reference to it as proof of any of the statements made in it, as to their verity. Whether the Mayor saw that particular thing as a basis of his opinion, that is another matter; I don't object to its being shown to him for that purpose, but for that purpose only.

Mr. Matthews has said he bases his opinion upon the press, upon books, upon pamphlets. I offered the pamphlet. Your Honor——

THE COURT: The pamphlet is just a repetition of the article, isn't it?

MR. FRAZER: Certainly, your Honor. That shows the verity of the quotation; and, moreover, the New York *Times* of the next day carried the same article.

THE COURT: The same quotation, you mean?

MR. MATTHEWS: Same quotation, your Honor; pardon me.

MR. FRAZER: And is that supposed to be proof of what Mr. Bridges said? If it is offered for that purpose, it is obviously irrelevant and improper.

MR. MATTHEWS: I am asking the question.

Q. Did you have these facts about Mr. Bridges in mind when you called him a leading Communist?

MR. MATTHEWS: How else can anyone meet the proof?

MR. FRAZER: I object to the——

THE COURT: Don't say facts. Amend it to say "Did you have the alleged statement of Mr. Bridges?"

Q. Did you have these alleged statements—I am perfectly willing to amend it to that form——

THE COURT: All right. Will you answer that, Mayor?

MR. FRAZER: Might he also say at what time these alleged statements were in the Mayor's hands?

Q. Prior to your making the statement that Bridges ordered 500 of his strong arm men into Jersey City.

MR. FRAZER: Now, I object to that as a complete misquotation of any testimony that we have.

MR. MATTHEWS: Now, just a minute. Page 1223, 1224. I brought it up here before. Here it is.

Page 1223, the bottom, I will read a few questions about it so that the context will be available.

"MR. FRAZER: "—to define 'invasion' which he is now using again? That's what I am trying to ascertain, what he considers an invasion. Now he has just used the word which I am asking him to define.

"A. I am going to explain my interpretation of invasion, but you are interrupting me.

"Q. I am sorry. I don't wish to interrupt you, but I would like to have you confine yourself to the questions.

"A. My interpretation of invasion is the declaration that Harry Bridges has made, the noted Communist of the country, when he ordered 500 of his strong-arm men to invade Jersey City, to destroy the civic industry of Jersey City. That's an invasion."

The next page I quoted was pages 1682 and 1683. Mr. Ernst is examining. I will read you a few question in advance of it.

"Q. Will you name me please ten or let's say twelve CIO leaders who you have said were undesirables, not the rank and file, the leaders; can you name me ten or twelve?

"A. Well, John Brophy and all his assistants.

"Q. Name me another one besides John Brophy.

"A. Well, I don't know the names, I have read about Mr. Lewis' utterance condemning John Brophy and his assistants, who is now taking a very prominent part in the leadership of the CIO.

"Q. Now, Mayor, you know that isn't what I asked you; I asked you to name me some names.

"A. I am naming you John Brophy and all his assistants, that's all I know.

"Q. Can you name me another name?

"MR. MATTHEWS: Well, he has already named Bridges in this case.

"MR. ERNST: If your Honor will please ask counsel not to prompt the witness. This witness is a competent human being and does not have to have words put in his mouth by Mr. Matthews.

"Q. Do you know another one besides Mr. Bridges supplied by your counsel?

"A. Well, I forgot about Harry.

"Q. All right, now, name me another one.

"A. Curran."

And so on it went. These men were described as undesirable CIO leaders.

Now, it is the purpose of this question to ask the Mayor when you called them undesirable, and this is cross-examination on his own testimony, you based your opinion as to Bridges upon these articles and continually through the trial we have had articles, we even had a quotation from the Reich. I didn't ask them to bring anybody over to prove that the Reich said that.

THE COURT: I am allowing the question.

MR. MATTHEWS: So sorry, my hearing is not acute.

MR. FRAZER: I understand it is limited to the papers that are shown without designation of the sources; as a quotation from the Seattle paper, for instance, there is no proof.

MR. MATTHEWS: I read you: "The end of the employing classes was predicted yesterday by Harry Bridges, Pacific Coast president of the International Longshoremen's Association."

MR. FRAZER: I object to these things being read into the record. He may show the Mayor the instrument and ask the Mayor whether that instrument was part of the matter which came to his attention leading to his belief but he may not proceed to read whole news-

paper articles here, picking out what he wishes and calling the Mayor's attention to it.

MR. MATTHEWS: Your Honor, that isn't the purpose; it is only the same purpose that they had. They confronted this gentleman on the stand with quotations from everything that they had. I now want to show the Mayor the quotation and for convenience read it. If you want to let the Mayor read it I will let him read it.

THE COURT: You may read it.

Q. (Continuing.) "In a fiery talk before a group of students and faculty liberals on the University of Wisconsin campus." "Our policy is one of class struggle," Bridges declared. "Our policy is that we have nothing in common with employers. There will come a time when there aren't any employing classes any more and we subscribe and look forward to that day." "Bridges made but slight reference to Mayor John F. Door"—I won't read that if you don't want me to; it is not important to the issue.

MR. FRAZER: I haven't any desire for you to read it.

Q. (Continuing.) Continuing the quotation from Bridges. "We will use politicians so long as they can aid us," Bridges said. "We will support the C. I. O., the A. F. of L. will die. The men at the head of the A. F. of L. haven't got the brains to keep their set-up alive," Bridges asserted —it was all in quotes—"They are too tangled with the high operating interests. They are working for the Mellons, Morgans and the Vanderbilts. The C. I. O. does not advocate withdrawal from the A. F. of L. as yet but we will fight within it. The break will come. We are close to it now."

MR. FRAZER: Now, may I say "So what?"?

MR. MATTHEWS: When you re-direct him you can say "So what?" and he may answer you. For me I have my answer.

MR. FRAZER: You haven't asked him anything yet. Do I understand that that was a question?

Q. Yes. Will you please tell us—it is way back—whether you based your information in part on that knowledge of a speech alleged, as the Court suggested, to have been made by Bridges?

MR. FRAZER: I object to the part as to the knowledge of the speech, I object to that;—whether it was this item that gave him information which he relied upon, but not knowledge as to whether this speech was made.

Q. Will you tell me whether or not you based your information as to Bridges partially upon that article and the statements alleged to have been made by Bridges in it?

A. I have.

MR. FRAZER: Now we are getting it simplified and regular.

MR. MATTHEWS: Oh, I am just as regular as the day is long.

Q. Mr. Mayor, you said that you had in your possession, and you based your information of the interlock between Communism and CIO upon information which you gleaned from the pamphlet which I have in my hand issued by the "National Republic Magazine." That is correct, isn't it?

A. Yes, sir.

Q. And did you in that pamphlet at page 18 read a quotation from the labor speech of Mr. Green, head of the Federation of Labor, on the twenty-first day of May, 1937?

A. I did.

Q. I show you that pamphlet and ask you if you read that alleged quotation from the speech of Mr. Green on the day in question.

A. I did.

MR. FRAZER: May I look at that?

MR. MATTHEWS: Yes, quotation beginning "C.I.O."

MR. FRAZER: When was that published, what was this published for, when was that speech made?

MR. MATTHEWS: May 21; it is there, May 21, 1937.

MR. FRAZER: Do you know when this was published, John?

MR. MATTHEWS: Yes, Spaulding, that was published about——

MR. ERNST: No proof here at all.

MR. MATTHEWS: It was published,—I think I had a copy of it in December of last year.

Q. Now, Mr. Mayor, in what you read there is the statement of Mr. Green, the alleged speech of Mr. Green, that "The C. I. O. is being energetically supported by the American Communist Party!"?

A. Yes.

Q. Did he charge, in quotations, "An evil influence has caused groups of newly organized workers connected with the C. I. O. to follow destructive policies and as a result public opinion is turning against them"?

MR. FRAZER: I object to the question, whether Mr. Green was charging—you are reading from this—whether that appears in the pamphlet.

MR. MATTHEWS: That he read from an item taken from the Russian newspaper. I didn't read the rest of it. I thought you wanted me to confine myself to the quotation.

Q. Did you also see in that that the "New York Times" of June 28, 1937, had this quotation: "Men with Socialist and Communist backgrounds have been active in the automobile factories and power plants and other industries under the banner of the C. I. O."?

A. Yes, sir.

Q. And did you have those facts in mind when you answered your counsel or the counsel that examined you as a witness concerning the automobile strikes and rubber strikes in Akron and in Detroit, Michigan?

A. I did.

MR. FRAZER: I object again. Just a moment, Mayor, I object to the continuous incorporation by Mr. Matthews in his questions of the word "fact."

Q. Well, information instead of fact. O. K. Will you change that?

Did you have that information in mind?

A. Yes, sir.

Q. When you made the statements about the workers and so forth. And in your reading of this pamphlet did you read an article from the Communist Report of the Ninth Convention of the Communist Party?

MR. FRAZER: I object to the designation of it again. You are again calling these things by their names as though they were proven to be facts in this case.

MR. MATTHEWS: The alleged Communist Report.

MR. FRAZER: "Did you read a pamphlet which contained this page," is the way to have it, and mark the page for identification.

MR. MATTHEWS: Thanks, Dean.

Q. Did you read this pamphlet which contains page 15: "While we meet the C. I. O. is launching the second great crusade to carry trade unionism into the open shop citadel of monopoly capital. Nothing so heartening has been seen in the labor movement since 1919 when the Chairman of our Party, Comrade Foster, carried through the first great organizing campaign in the steel industry which culminated in the great general strike. We can say that the transformation would have been impossible without the energetic.

persistent, well planned and well directed participation of the Communist Party and its followers in the C. I. O. movement."

Did you read that?

A. Yes, sir.

MR. FRAZER: Will you tell me what that is being read from?

MR. MATTHEWS: Pamphlet issued by the National Republic Magazine, 511 11th Street N. W., Washington, D. C. It is being quoted from page 15 and it is an alleged quotation from the Report of the Ninth Convention of the Communist Party.

Q. Now, frequently during your testimony, well, several times during your testimony, Mr. Mayor, you referred to the Fish Report, did you not?

A. I did.

Q. I show you a book or a pamphlet, paper book, with the certification of the Clerk of the House of Representatives on the front of it. Will you look at the pamphlet besides the certification and may I ask you is that the Fish Report that you referred to?

A. It is, that is the certification.

MR. MATTHEWS: Do you want to look at the certification?

MR. FRAZER: No, indeed, I assume that that is correct.

MR. MATTHEWS: May I leave the certification on your Honor's desk so I won't lose it? I don't mean that for you, Spaul; I mean among my other papers. I don't mean it even for Mr. Ernst.

Q. Now, in making the statement as you did several times, during your testimony, that the CIO leaders were Communistic, did you read in the Fish Report of the investigation of Communistic activities statements by Comrade Foster, who is mentioned in the quotation I just read you?

A. I did.

Q. I show you page 9 of that report. First of all—strike that out—do you know that Comrade Foster is William Z. Foster?

A. I do.

Q. Yes.

A. And a prominent member of the Communists.

Q. Now, I show you that report and ask you if there is therein contained the testimony of William Foster, before the Fish Committee?

A. There is.

Q. Now, I ask you did you this:

"THE CHAIRMAN:"

To Mr. Foster; I interpolate to Mr. Foster.

MR. FRAZER: Might I ask the date of that report?

MR. MATTHEWS: Yes, your Honor, that report is 1931 or 2; I have forgotten——

MR. FRAZER: Might I ask what time that report came to the Mayor's attention?

Q. How long have you had a copy of the Fish Report, Mr. Mayor?

A. Oh, over a year; right after this trouble started, we immediately started to get together all these facts concerning the CIO and concerning everybody interested in the Civil Liberties that injected themselves into this controversy.

MR. FRAZER: When you say this trouble started, that refers to the November 29th episode?

THE WITNESS: Yes.

MR. FRAZER: Or immediately before that?

THE WITNESS: The first Bridges'——

MR. FRAZER: And it was after that that you got the report?

MR. MATTHEWS: No, he said he had the report a year, Mr. Frazer.

Q. Did you read this:

"THE CHAIRMAN:" to Mr. Foster—I interpolate to Mr. Foster.

"Now, can you tell us"——

MR. FRAZER: May I ask what the relevancy of this line of examination is? Mr. Foster has not been brought into this in any way. Mr. Foster is no party to the proceeding, and how can the statements of Mr. Foster, whether believed by the Mayor or not, have anything to do with this case?

MR. MATTHEWS: Because, if your Honor please, to answer my opponent, because in the statement of the Communist convention, the alleged statement, "Comrade Foster carried through the first great organizing campaign in the steel industry," and they add, "we can say that the transformation would have been impossible without the energetic, persistent, well-planned and well-directed participation of the Communist Party and its followers in the C. I. O. movement."

MR. FRAZER: Now, this is a report, the Fish Report of 1931. The CIO wasn't in existence——

THE COURT: As a matter of fact, Mr. Matthews, I think you will find that there was a Senate investigation of Comrade Foster, as you call him, at the time, because in my youth I attended the hearings with Mr. Lindabury.

MR. MATTHEWS: That must have been after 1931, if you say in your youth.

THE COURT: It was early.

MR. MATTHEWS: You have been on the bench thirteen years.

THE COURT: About eighteen years ago, I think, if I remember.

MR. FRAZER: Just around 1920, sir, when they were having——

THE COURT: I remember Comrade Foster, as you call him, being examined by a Senate committee.

MR. MATTHEWS: Yes, but this is only seven years ago, Judge Clark.

MR. FRAZER: Yes, but it is five years before the CIO, or more than that was organized.

THE COURT: I mean Comrade Foster didn't even attempt to conceal the fact from the committee, as I remember it, that he was a Communist.

MR. MATTHEWS: No, but by the same token, if your Honor pleases, I think that this man's utterances, if known to the Mayor, you understand, your Honor, from this report—from him I got the report—if known to the Mayor, the question is did that help him to conclude that these men, who were in the forefront of CIO, are Communistic.

THE COURT: Is there any proof——

MR. FRAZER: No proof of that whatsoever.

THE COURT: —so far that Mr. Foster had anything to do with the CIO?

MR. MATTHEWS: There is this proof, that Mr. Foster was the original organizer, and that the Communist Party——

THE COURT: Of what? Of the CIO?

MR. MATTHEWS: No, no, no; of the steel industry strike way back in 1919.

THE COURT: That is the one that those hearings that I attended were about.

MR. MATTHEWS: And that this CIO movement now is a continuation of that.

THE COURT: Well, there is a ga pof about fifteen years, there. What proof is there covering that?

MR. MATTHEWS: I want to show, since Foster has been glorified as the man who organized the steel industry, and that there is a tie-up between Communism and the steel industry, what Foster, who organized the steel men then, considered Communism and fidelity to American principles and to riot and bloodshed activities.

MR. FRAZER: It is clearly incompetent.

MR. MATTHEWS: More than that, I am prompted by my associate, shortly I shall show you that William Z. Foster is one of the directors of the American Fund for Public Service, the Garland Fund, which is the financing fund of the Civil Liberties Union and of various other activities that are entirely Communistic.

MR. FRAZER: Now, that is a wholly gratuitous statement on the part of Mr. Matthews.

THE COURT: I said, Mr. Matthews, before you came into the case, that I thought it would be very useful from the point of view of the public if we had a thorough investigation or search under oath into alleged Red activities. I have no objection to that. I am not sure how relevant that might be to the legal issues, but with the consent of both sides, I should think it would be a most useful thing. But that doesn't mean statements from counsel, statements from the newspapers, or hearsay testimony.

MR. MATTHEWS: This isn't——

THE COURT: I mean where is Mr. Foster? Why not produce him?

MR. MATTHEWS: I ask your Honor on the record to allow me to produce evidence out of the lips of Mr. Foster before the Fish Committee, that he considered that the Red flag and not the American flag was his flag, that he owed allegiance to the Soviet Government, and I want to show that that is the same man who is credited with having organized the steel workers in 1919, and that is the same man who today is a director of the Garland Fund, the American Fund for Public Service, which finances the Civil Liberties Union, the Workers Defense League and various others of these boring-in organizations that are Communistic.

THE COURT: Aren't you beginning at the wrong end? Shouldn't you show first that he has something to do with the CIO, and then, secondly, the so-called Garland Fund has anything to do with the Civil Liberties Union?

MR. MATTHEWS: Well, if you want me to do it that way on this case, I will do it, with Mr. Foster.

MR. FRAZER: Might I say also that this examination of Mayor Hague seems to be for the purpose of proving that Mayor Hague had a certain state of mind. I think it was perfectly obvious from his direct examination that he did. Now, if Mr. Matthews' purpose is to break down his statement that he had such a state of mind, then this would be proper examination. If he is conceding it, there is no reason for it whatsoever. The Mayor has stated his grounds, and I think everyone has been convinced that he stated them sincerely. Whether he had a lot of these things which went to the making up of that mind is something appropriate on direct examination but not under cross-examination unless it is for the purpose of checking on the Mayor's credibility. I think it is perfectly preposterous that Mr. Matthews should be attempting to do anything of that kind.

MR. MATTHEWS: It is not preposterous to test his credibility. Now, all that Spaulding has said means nothing. I am cross-examining him upon definite statements in the record. They have made their testimonial bed and they must lie in it while I cross-examine; because they have sought to create in this court and before this country, with favorable newspaper comment, that Mayor Hague had nothing in his mind at all to make him believe that Brophy and Bridges and the rest of them were Communists.

Now, I am bringing to the Mayor's attention what they would not. They said: "You will get your chance when you are examined by Matthews," as Mr. Ernst would say. Now when I get my chance, they say: "Oh, no; you mustn't do that; you mustn't give him testimony that these Communists have said, 'we owe no allegiance to any flag but the Red flag; we recognize nothing but the Soviet Government.'"

THE COURT: But isn't that a matter of common knowledge, Mr. Matthews, so far as that goes?

MR. MATTHEWS: But on this record it isn't a matter of common knowledge, please, Judge Clark. That's certain, isn't it, now?

So that I must have that in the event that it should be necessary for me ever to use it in the upper court.

MR. FRAZER: If it is a matter of which we have common knowledge, the Court may take judicial notice of it, and the upper court is equally capable of taking judicial notice of it.

MR. MATTHEWS: If Judge Clark will let me read it to him and say he will take judicial notice of it, I will be very glad to accept the Court's suggestion.

THE COURT: Go ahead.

Q. "THE CHAIRMAN: Does the Communist Party advocate the confiscation of all private property?

"MR. FOSTER: The Communists——"

MR. FRAZER: Now, I think we should have a ruling upon whether the use of this report, statements, alleged statements, as to what Mr. Foster, the alleged Communist, and very likely a real Communist, has said, is relevant—what the relevancy to this issue of that may be. There is nothing——

THE COURT: I suppose if Mr. Foster were called, he would say that he is a Communist and that he believed in Communism. Maybe he would even say he glorified in it.

MR. MATTHEWS: That isn't my concern in this question. I am cross-examining the Mayor upon what prompted him. He said the Fish report prompted him to the conclusion that these Communists were tied in with the CIO and vice versa. I quoted him from the pamphlet——

THE COURT: The Fish report doesn't say one word about the CIO, does it?

MR. MATTHEWS: No, there is no word about it; but, Judge Clark, even when we are looking for it, don't they ask us, "Well, what did you do yesterday?" or "What did you do a week ago?"

The same way with this man. If that is his stripe at that time, when he was organizing steel workers, and I show——

THE COURT: Well, you surely don't contend that the fact that a Communist organized steel workers in 1919 is proof that in 1937, because someone else organized steel workers, therefore the someone else is a Communist?

MR. MATTHEWS: Oh no; no, that would be a gross non sequitur. That is not what I am trying to prove at all. I am trying to show the character of this Fos-

ter who is mentioned, sir, in the quotation just given. Now, he is also a director of the Garland Fund. If you want me, as you suggested, to go back to the Garland Fund first and bring that in, so as to connect it up, as a present-day person, actually interested in these proceedings, I will be glad to do it.

MR. FRAZER: Well, may I say that this examination is not a cross-examination of the Mayor's testimony?

MR. MATTHEWS: Oh, yes, it is.

MR. FRAZER: The Mayor has testified as to certain things which were the basis of his——

THE COURT: I am not particularly inclined, Dean Frazer, to be technical about what is or what isn't cross-examination.

MR. FRAZER: I don't wish to be technical, sir, but I think we are taking a great deal of the time of the Court, and this type of cross-examination which Mr. Matthews is now indulging in is for the purpose of showing that there were sources which would have led the Mayor to conclusions other than those to which he arrived. Now, what Mr. Matthews on cross-examination is attempting to do, is to enlarge the scope of the Mayor's testimony on direct examination, which there has been no effort to question at all. It is like trying to prove over all the facts in the case after they have been admitted.

MR. MATTHEWS: That, of course, the proof—the purpose of cross-examination, your Honor, is to bring out from the standpoint of the attorney for the defense, what facts stated by the witness are helpful to the defense. Now, that's our privilege; that's a fundamental privilege.

THE COURT: Well, go back to the Garland Fund.

MR. MATTHEWS: All right, your Honor.

Q. Mr. Mayor, you declared that Mr. Ernst is Communistically inclined, didn't you?

A. I did.

Q. You also declared that the Civil Liberties Union is Communistically inclined, did you not?

A. I did.

Q. Now, in forming that opinion, did you have in your possession the Fish report, and had you read it?

A. I did.

Q. I turn to page 56 of the Fish report and show you the heading "American Civil Liberties Union."

A. I did.

Q. I turn to page 59 of the report and show you the heading "The Garland Fund." Right here, Mr. Mayor (indicating).

A. The Garland Fund; I did.

Q. Yes. Now did these facts in the Fish report from page 56 help you to form your opinion that Mr. Ernst is a Communist or Communistically inclined?

MR. FRAZER: Now that I object to; I object to the word "facts" again.

THE COURT: Is that the Fish report you have there?

MR. MATTHEWS: Yes.

THE COURT: May I see it, please?

MR. FRAZER: Not "facts," Mr. Matthews, please.

(Mr. Matthews handed a copy of the pamphlet referred to to the Court.)

THE COURT (after examining pamphlet): All right.

Q. "The American Civil Liberties Union is closely affiliated with the Communist movement in the United States."

MR. FRAZER: Wait a minute. I object. He has answered the question. Now are we to have all this read

into the record? He has said that that was the basis from which he got his information. Now, if Mr. Matthews wants to show that the conclusions which he drew from this were irrational, then he has a right to examine him on this matter. Otherwise he is concluded by the answer.

MR. MATTHEWS: No, your Honor,——

MR. FRAZER: Now, might I ask Mr. Matthews at this point whether these quotations from various publications that he has in his hand are to constitute the proof of Communism that has been running by suggestion throughout this case?

MR. MATTHEWS: I am cross-examining the witness, your Honor.

THE COURT: Why don't you put the report in evidence?

MR. MATTHEWS: Upon his statement—well, now, if your Honor pleases, there are isolated quotations against Mr. Hague in this case, and they said, "Did you base your information upon that"? Now, haven't I in cross-examination the right to introduce the quotations, which they wouldn't let him volunteer? How else would a man meet the situation?

THE COURT: Why not mark them then?

MR. MATTHEWS: What is that, your Honor?

THE COURT: Why not mark them and save time?

MR. MATTHEWS: Well, I want to put them on the record, if your Honor please.

THE COURT: All right.

MR. FRAZER: If he be permitted to do that, sir, I would ask an exception to your Honor's ruling.

THE COURT: All right.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. "The American Civil Liberties Union is closely affiliated with the Communist movement in the United States and fully 90——"

THE COURT: Who is the author of that report? Is that a quotation from the author of the report?

MR. MATTHEWS: Yes, your Honor, the Fish report.

THE COURT: Well, who is it? You had better have that in the record.

MR. MATTHEWS: The Fish report is signed, if your Honor pleases, Hamilton Fish, Jr., Chairman, Carl G. Bollman, Edward E. Lick, Robert C. Hall.

THE COURT: Were there witnesses called before the committee?

MR. MATTHEWS: Yes, your Honor, the list of the witnesses is here, all the witnesses.

THE COURT: Wouldn't it be the proper way to prove it to get the testimony and show what witness, for instance, made these assertions about the Garland Fund.

MR. MATTHEWS: But Mayor Hague is being asked what he read in this report to give him the conclusions.

MR. FRAZER: Well, are we to read into the record all the books and all the newspapers which Mayor Hague may have read at some time bearing upon this issue?

MR. MATTHEWS: Well, your Honor, the answer to that is no.

MR. FRAZER: Nobody has questioned the Mayor's sincerity.

MR. MATTHEWS: Except that we do want to read some other papers except the ones that they have read, the *New York Times*, etc.

THE COURT: I will allow it.

MR. MATTHEWS: Thank you, sir. Excuse me.

Q. (Continuing.) "And fully 90 percent of its efforts are in behalf of Communists who have come into conflict with the law. It claims to stand for free speech, free press and free assembly, but it is quite apparent that the main function of the A. C. L. U. is to attempt to protect the Communists in their advocacy of force and violence to overthrow the Government, replacing the American flag by a Red flag and erecting a Soviet government in place of the Republican form of government guaranteed to each state by the Federal Constitution."

"Roger N Baldwin, its guiding spirit, makes no attempt to hide his friendship for the Communists and their principles. He was formerly a member of the I. W. W. and served a term in prison as a draft dodger during the war. This is the same Roger N. Baldwin who has recently issued a statement that at the next session of Congress 'our job is to organize the opposition to the recommendations of the Congressional Committee investigating Communism.' In his testimony before the Committee he admitted having said at a dinner held in Chicago that 'the Fish Committee recommendations will be buried in the Senate.' "

Testifying on force and violence, murder, etc. the following is quoted——

THE COURT: What did happen to it?

MR. FRAZER: He was a prophet as well as a Communist.

MR. MATTHEWS: Yes, and those prophets, I hope, are not part of our administration, Judge Clark, because that is a reference to one not of our party.

Q. (Continuing.) "THE CHAIRMAN: Does your organization uphold the right of a citizen or alien, it doesn't make any difference which, to advocate murder?"

"MR. BALDWIN: Yes."

"THE CHAIRMAN: Or assassination?"

"MR. BALDWIN: Yes."

MR. FRAZER: If I may interrupt here, all of that part appears in resolutions now in evidence here which were given to us by the Jersey City authorities, and is there any possible reason for reading this all over again into the record? It is not proving anything, it is merely information which the Mayor accepted as having weight in forming his opinion.

THE COURT: Is it the suggestion that Mr. Baldwin advocated murder?

MR. MATTHEWS: That is the testimony, it is followed up.

MR. FRAZER: Well, there is in evidence a resolution adopted by the veterans, a copy of which——

MR. MATTHEWS: May I please cross-examine?

MR. FRAZER: —was sent to us by the Jersey City authorities attached to Mr. Casey's letter to us. That is in evidence. Now, if there is any need to repeat that I cannot see it.

THE COURT: I should think—I must say, Mr. Matthews, it seems to me that without the whole testimony, in other words, with just one excerpt from it——

MR. MATTHEWS: You wouldn't think the Fish Committee would do that, Judge Clark, just take an isolated instance and offer it to the country without its context?

THE COURT: I would be reluctant to believe that anyone advocated murder.

MR. MATTHEWS: That is his statement. Let me follow on.

MR. FRAZER: May I just say this before you do, Sir John? I cannot see, except Mr. Matthews is charmed with his own voice—because the part which he is now reading is actually attached to our bill of complaint——

A. For the benefit of the Court, Congressman Fish told that to the Chamber of Commerce, your Honor, and he informed me that that is the testimony of Mr. Baldwin before him.

THE COURT: I am not informed, of course, Mayor Hague.

MR. FRAZER: I think it is wholly immaterial whether it is his testimony or not.

THE COURT: The honorable congressman is a graduate of the same school that I am, as a matter of fact, and I know would not in any way falsify the testimony, of course not. I am only wondering if the full testimony would actually reveal that Mr. Baldwin advocated murder, because if he did advocate murder it seems to me he should have been punished for such advocacy.

MR. MATTHEWS: There are many of them who have gone unwhipped of justice which we will show you before we get through, but that is because of their influence with certain groups, not our party, I hope.

Q. (Continuing.) "THE CHAIRMAN: Does your organization uphold the right of the American citizen to advocate force and violence for the overthrow of the Government?

"MR. BALDWIN: Certainly, in so far as mere advocacy is concerned.

"THE CHAIRMAN: Does it uphold the right of an alien in this country to urge and advocate the overthrow of the Government by force and violence?

"MR. BALDWIN: Precisely on the same basis as any citizen.

"THE CHAIRMAN: You do uphold the right of an alien to advocate the overthrow of the Government by force and violence?

"MR. BALDWIN: Sure, certainly. It is the healthiest kind of thing for a country, of course, to have free speech—unlimited."

That is the language of the quotation.

"The American Civil Liberties Union has received large sums from the Garland Fund, of which Roger Baldwin is one of the directors. During the trial of the Communists at Gastonia, not for freedom of speech, of the press, or assembly, but for conspiracy to kill the chief of police, of which seven defendants were convicted, the A. C. L. U. provided bail for five of the defendants amounting to $28,500, which it secured from the Garland Fund, and all defendants convicted jumped their bail and are reported to be in Russia. The $28,500 bail was forfeited including $9,000 more advanced by the International Labor Defense. A committee of the New York Legislature, back in 1928 reached the following conclusion in regard to the American Civil Liberties Union: 'The American Civil Liberties Union in the last analysis is a supporter of all-subversive movements. Its propaganda is detrimental to the interests of the state. It attempts not only to protect crime but to encourage attacks upon our institutions in every form.'" "Your committee," adds the Chairman, "concurs with the above findings."

Now, the reference to the Garland Fund contains the name of Mr. Ernst as its treasurer, does it not?

A. It does.

Q. From that report on page 59.

A. The incorporation papers of Delaware carries Mr. Ernst as treasurer.

Q. Yes, his office incorporated the organization, did it not?

A. Yes, sir.

Q. "The American Fund for Public Service, Inc. located at 2 West 15th Street, New York City, generally known as the Garland Fund, has helped to keep alive the American Civil Liberties Union."

MR. FRAZER: May I object here, that the Garland Fund is not a party whatsoever; we have no objection to Mr. Matthews continuing to read outmoded matter, a congressional investigation whose report was considered at the time so rabble-rousing to the other rabble that is was snowed under.

MR. MATTHEWS: I object.

MR. FRAZER: And not adopted. Now, if it gives him any joy to continue to read, that's all right.

MR. MATTHEWS: It gives me very much pain to find Mr. Ernst as treasurer of this fund, which has financed these subversive movements.

MR. FRAZER: Mr. Ernst is not a defendant in this case.

MR. MATTHEWS: The Civil Liberties Union is and he has been called Communistic by Mayor Hague, and he was asked for his proof. Indeed, said Mr. Ernst yesterday, "Did you know that Governor Lehman appointed me on this?" "Did you know somebody else appointed me to that?" Now, what I want to know from the Mayor is, Did you know he was treasurer of this Garland Fund, whose contributions to these subversive interests are such that it shocks one in the same way that the New Masses. If your Honor will look at the pages of the New Masses and then look at what he said yesterday about fomenting religious differences, you will have a different opinion, and it is our concern that Mayor Hague shall appear before you and in the record here as having reason for his opposition to Mr. Ernst as a speaker in Jersey City.

MR. FRAZER: Mr. Ernst is not a speaker, has not asked for a permit.

MR. MATTHEWS: Oh, yes, he did.

MR. FRAZER: I beg your pardon, that's right. But the Garland Fund has absolutely no relevancy in this issue and the efforts which Mr. Matthews is now making to bring the Garland Fund into the matter is an effort to prove, not the fact that statements of that kind were made, but he is offering it, as I take it, as a substitute for substantive evidence. That is the only purpose that I can conceive that he has.

THE COURT: Of course, as far as an affirmative defense is concerned, it is not good proof at all.

MR. MATTHEWS: I am not offering it as that, I am just cross-examining the mayor so that he may have on the record and so that your Honor may have on the record his reasons for telling Mr. Ernst that he is this and that. I have, moreover, from the library in Jersey City here, the report of the Garland Fund, if your Honor would like to be looking at it, and I am going to introduce—not introduce it, but I am going to call it to the mayor's attention soon. But what I want to show you is that Roger Baldwin is one of the directors of this, that Norman Thomas is one of the directors of this, that Mr. Ernst is the treasurer of this, that Mr. Ernst incorporated this, and that what this has done has been subversive of Americanism, and has given rise to a great deal of the information——

THE COURT: The Garland Fund——

MR. MATTHEWS: Certainly to the information of Mr. Hague about Mr. Ernst.

A. Well, the Garland Fund, Counselor, is the foundation of this whole movement and if you are going to keep the Garland Fund out, your Honor, we might as well stop.

The Garland Fund will prove that this is the instigator to everything pertaining to Communism, that they supplied millions of dollars in expenditures maintaining the Communistic movement throughout the country——

MR. FRAZER: I object to speeches by everybody.

THE COURT: It hasn't been offered yet. Go ahead.

MR. FRAZER: Well, now, is there any reason why this should all be read into the record?

MR. MATTHEWS: It is very short.

MR. FRAZER: The mayor may be shown this and asked if that was part of the matter which came to him to make up his judgment, but if we are going to read all of these volumes and volumes and volumes in to prove a substantive fact——

A. Will you permit me to go on and show the country just exactly what is before this Court?

THE COURT: Go ahead.

Q. (Continuing.) The American Fund for Public Service, New York City, generally known as the Garland Fund, has helped to keep alive the American Civil Liberties Union, the International Labor Defense, the Communistic Legal Defense Committee headed by J. Lewis Engdahl, the Workers Communist School in New York City, and the Pioneer camps, as well as the Daily Worker and many other Communist and advanced Socialist and radical and ultra-radical organizations. This fund in original amount of about $900,000 was established in 1922 by a rich son of a Massachusetts industrialist, and increased in amount due to enhanced values of the stock of the First National Bank of the City of New York.

THE COURT: He also went to the same school, Congressman Fish and I went to, so it seems to have produced all shades of opinion.

MR. MATTHEWS: Yes, your Honor. I am also from Massachusetts and I remember Harvard in the good old days.

THE COURT: No, the elementary school.

MR. MATTHEWS: Groton?

THE COURT: St. Marks.

MR. MATTHEWS: Swell school.

Q. (Continuing.) Well, continuing: And that was increased to $2,000,000, the $900,000. "Of this sum, approximately $600,000 is left. The directors of the Garland Fund are: Roger Baldwin, Robert W. Dunn, Morris L. Ernst, Elizabeth Gurley Flynn, Lewis S. Gannett, Benjamin Gitlow, Clinton Golden, James Weldon Johnson, Freda Kirchway, Clarina Nichelson, Scott Nearing and Norman H. Thomas. The following is a partial report of the loans and expenditures from the Garland Fund to Communist organizations."

Now, in order that you may have that in source I have it right there before you, but I have made a compilation, if your Honor please. However, since I am not offering it as testimony but as cross-examination of the mayor I will read from the report:

"The Daily Worker, the official Communist organ of the United States, $17,600," but your Honor will find before you there that the grand total in the Daily Worker in the Garland report that you have is $14,213.66 as of that date.

"The Passaic strike funds $25,318; Passaic bail bonds deposited for Communist strikers $45,000; Workers School at New York $11,000; International Labor Defense $14,000; Sacco-Vanzetti Committee $17,000; All-American Anti-Imperialist League $1000; Novy Mir, a Russian Communist weekly newspaper $500.

"The following loans were made to Communist organizations:

"The Daily Worker $31,375; International Labor Defense $35,000; Sacco-Vanzetti Committee $5000; All-American Anti-Imperialist League $100,000; Novy Mir $3000; Trade Union Educational League, now liquidated, $1500.

THE COURT: Are you picking out items—I notice this book you kindly gave me, Mr. Matthews, has a lot of other items.

MR. MATTHEWS: I am reading from the Fish report. I would be glad to give that to you; I am not picking out anything.

THE COURT: There seemed to be a lot of other items, Mooney and Billings.

MR. MATTHEWS: Yes, I think that is there.

THE COURT: Contribution for work against labor injunctions.

MR. FRAZER: You realize, your Honor please, the only purpose of this recital is not to elicit any fact, it is merely to read what Mr. Matthews considers a very damning kind of propaganda at a critical——

MR. MATTHEWS: I have considered nothing of the kind, I am trying to justify——

THE COURT: All I mean is that it seems to me that this report that you gave me should also be in evidence.

MR. MATTHEWS: Well, I cannot offer anything in evidence. I will be glad to have you mark it for identification.

THE COURT: I didn't mean in evidence. Mark it for identification.

MR. MATTHEWS: It is a library book but I think your Honor can protect us on that.

(Marked D-10 for identification.)

MR. FRAZER: Why not put in Das Kapital too?

MR. MATTHEWS: Das Kapital I will leave where it was spawned.

Q. I show you a paper, Mayor Hague, called the New Masses, dated May, 1932, and I ask you do you see the Garland Fund listed as the ownership of that New Masses?

MR. FRAZER: At the present time?

MR. MATTHEWS: Yes.

MR. FRAZER: Well, now, I don't know what the ownership of this is. In 1932 it may be.

MR. MATTHEWS: And it is today.

MR. FRAZER: How do you show that?

MR. MATTHEWS: If you want to show that that isn't correct you may do so on re-direct examination.

MR. FRAZER: Not at all, this is not cross-examination. There is nothing about Garland Fund ownership of New Masses in direct examination. If you are going from here to the New Masses, I don't know where you will go from the New Masses. If you can tie that with some common directors to something else, that will be brought in. There seems to be no limit.

THE COURT: I don't think there is any objection to this, Mr. Matthews, as a means of showing a state of mind, but as a matter of affirmative proof——

MR. MATTHEWS: I don't offer it as such.

THE COURT: —there would have to be some proof as to how the Garland Fund operates or whether Mr. Ernst has any control as treasurer of where the fund goes.

MR. FRAZER: He is not attempting to prove a state of mind, your Honor please; the mayor's state of mind is well known.

MR. MATTHEWS: If that were so I wouldn't be cross-examining him. You tried to make it known out of isolated quotations from newspapers. Now I will give you the real facts.

THE COURT: You shouldn't, Mr. Matthews, keep saying "facts."

MR. MATTHEWS: Well, that is for your Honor to determine, the real evidence.

MR. FRAZER: No, it is not for his Honor to determine; his Honor determines on proper evidence before his Honor, and these things may not be offered as evidence, they are a rehash of old things over the dam. We now have the New Masses of 1932. We have gone back to reports of Foster dated back to 1920.

MR. MATTHEWS: This is the New Masses, a magazine financed by the Garland Fund, of which Mr. Ernst is treasurer.

THE COURT: Well, everybody knows, almost since I was a boy, that has been published.

MR. MATTHEWS: Well, I cannot help whether it has been published since either you or I was a boy. What I want to show in this question now is that this magazine, of the type which is in front of you now, is financed by the Ernst mob.

MR. FRAZER: Now, if he wishes to show that he has a right to do it if it is relevant, but he has not a right to attempt to do it by asking the mayor whether he read something about it somewhere. Now, that is the purpose, as I indicated before. He denied a moment ago that that is the purpose.

MR. MATTHEWS: Oh, no.

MR. FRAZER: Theoretically he is examining the man now upon the state of mind of the mayor.

MR. MATTHEWS: With respect to Mr. Ernst.

MR. FRAZER: A state of mind which Mr. Matthews is trying to establish. The mayor fully established it on his direct examination.

MR. MATTHEWS: You have said that so often.

MR. FRAZER: No, I wish to reiterate it. He has fully established it upon his direct examination. Now, Mr. Matthews is not in any sense on the theory of cross-examination trying to limit the extent of that mental state nor to contradict the mental state, that's established. He is only trying to show that the mental state exists in full vigor. That is not the function of cross-examination and I object to further testimony along this line.

MR. MATTHEWS: I just want to show, because Mr. Frazer shut off Mayor Hague from giving his reasons that they didn't do him right, I want to show on cross-examination—they having made their testimonial bed must lie in it—I have a right to have the Mayor of the city as well as a man, a defendant in this case, called by them give the facts that he relied on, or alleged facts, as your Honor prefers to call them. Now, one of the facts is that the Garland Fund owns the New Masses. If your Honor just looks at the New Masses, I am quite confident you will conclude that when Mr. Ernst made that grandiose statement about minority religious groups you will be shocked into insensibility as a Christian gentleman by the very look of that picture.

MR. FRAZER: Now, there is nothing in evidence whatsoever, there is no fact—Mr. Matthews refers to a fact—in relation to the ownership of the New Masses.

THE COURT: I think we are willing to concede that the New Masses advocate doctrines which, as you say, would shock a Christian gentleman. I don't think there is any doubt about that.

MR. MATTHEWS: I want to show that the ownership is in the Garland Fund.

THE COURT: Shouldn't you, not for the purpose of showing a state of mind but for the purpose of showing whether it is a logical state of mind perhaps, show that the Garland Fund or deed of trust, whatever it is, gives Mr. Ernst discretion to give money to the New Masses?

MR. MATTHEWS: The Garland Fund owns it.

THE COURT: But had Mr. Ernst anything to do with buying this?

MR. MATTHEWS: Well, that was his opinion, that since they own this magazine, since he is one of the directors, since he is the treasurer of the fund, unless he is a sphinx, at meetings he must have O. K.'d what went on.

THE COURT: How long, does anyone know how long the fund has owned the New Masses?

MR. MATTHEWS: 1932 is the first knowledge we have that the Garland Fund purchased the New Masses, because it is the first statement of ownership that we have.

MR. FRAZER: There is nothing in there indicating the purchase.

MR. MATTHEWS: Oh, yes.

MR. FRAZER: There are a series of owners.

MR. MATTHEWS: You see you have each year, as your Honor knows—may I point out to you: "The American Fund for Public Service" is another name for the Garland Fund.

MR. FRAZER: Quite a number of other people there, too.

MR. MATTHEWS: Yes, Norman Thomas is a director, Baldwin is a director.

MR. FRAZER: It doesn't say it is the owner.

THE COURT: In other words, the Garland Fund or deed of trust might not leave it to his discretion. Then all you could say is that Mr. Ernst should have resigned as treasurer when they bought in.

MR. MATTHEWS: I don't think Mr. Ernst should have resigned; I think he should remain as long as he bought it.

MR. FRAZER: If Mr. Matthews is sincere in that he is saying it is very simple to ask the Mayor whether he was informed that the Garland Fund was such and such a thing and so and so and for that reason came to such and such a conclusion. There is no necessity for him to be reading all of these large extracts and bringing in copies of the New Masses and trying to give the impression of ownership, which is not yet in evidence; he can ask the Mayor whether he believed that to be the fact and if the Mayor says yes, that is sufficient for the mental status.

MR. MATTHEWS: I submit, if your Honor please, the printed affidavit in the New Masses by William Wippe, notary public, and Francis Strauss——

Q. Now I show you affidavit headed: "Affidavit of ownership required by the Act of Congress August 4, 1912, of New Masses, published monthly, New York, N. Y., for October 4, 1930——

MR. FRAZER: You show a copy of the New Masses of a certain date, you don't show the affidavit at all.

Q. I show you an affidavit in the New Masses—Mr. Frazer wants to get the place—of May, 1932, particularly on page 28, and particularly after the Fish Report, and particularly on page 28, and I ask you in that affidavit of ownership do you read that "the owner is the American Fund for Public Service, 2 West 13th Street, New York

City," and then do you read, "James Weldon Johnson, president, Morris L. Ernst, treasurer"?

A. I do.

Q. And were those facts known to you, Mr. Mayor?

MR. FRAZER: Now, I object again, were those facts known to him. Was it the reading of that article?

MR. MATTHEWS: No, I object; don't frame my question.

MR. FRAZER: But again you are saying facts.

MR. MATTHEWS: You object?

MR. FRAZER: I do object.

MR. MATTHEWS: I haven't finished my question. I don't know how you can rule until I finish my question.

Q. Were those facts known to you from the reading of the New Masses in that particular place I show you, known to you at the time and being known to you did they help you form your opinion of Mr. Ernst as a Communist?

A. They did.

MR. FRAZER: Those facts. Of course, do you mean ultimate facts?

MR. MATTHEWS: There are no ultimate facts except in the Deity.

A VOICE: Oh!

MR. MATTHEWS: You see, just a little rise when I mention the Deity from the godless among us.

MR. FRAZER: Now, I object to those remarks, if the Court please.

MR. MATTHEWS: That was clearly it, your Honor, and as a Christian gentleman I resent it.

MR. FRAZER: I see no reason for bringing the Deity continuously into court.

MR. MATTHEWS: I think he is in court all the time.

MR. FRAZER: All right. He doesn't have to be brought in because he is here already then, Sir John.

MR. MATTHEWS: Will your Honor give me a ruling on the question?

THE COURT: Go ahead. You may answer.

Q. Did those facts that you read——

A. Yes.

Q. Help you form your opinion? Now, Mr. Mayor——

MR. MATTHEWS: I would be very glad, if your Honor wants me, to have that marked for identification. I would really like to have that marked for identification, because it is the evidence of ownership there by the Garland Fund.

(Marked Exhibit D-11 for identification.)

MR. MATTHEWS: If your Honor please, may I request permission to have this photostated so that I may return the original?

THE COURT: Yes.

MR. MATTHEWS: There is no objection to your using this, Spaulding, if you wish.

MR. FRAZER: What was that?

MR. MATTHEWS: I asked to have it photostated so that I could return the original. It does not belong to me.

Will your Honor grant a five minutes' recess, because of the fact that Mr. O'Mara and I want to confer about a matter?

THE COURT: I will grant a ten minutes' recess.

MR. MATTHEWS: Ten minutes, all right, instead of taking it later?

THE COURT: Yes.

(Short recess.)

AFTER RECESS.

Q. Mr. Mayor, at page 1487 of your testimony you said that the name CIO was a name that was considered a serious question in any city, and that the papers were carrying spreadheads all over the front pages, showing disorders and violence.

I show you a copy of the "Akron Beacon Journal," Akron, Ohio, Friday evening, May 27, 1938, and ask you is that one of the papers that you referred to?

MR. FRAZER: Now I object. A paper from Akron—what date did you read?

MR. MATTHEWS: May 27, 1938.

MR. FRAZER: 1938—cannot possibly have had any effect upon the Mayor.

THE COURT: What is the date?

MR. MATTHEWS: May 27, 1938.

THE COURT: No, I think that's too late, Mr. Matthews.

MR. MATTHEWS: Oh, but Judge Clark, may I argue a moment? You know, the Mayor was asked questions as to whether or not these people would be entitled to come into Jersey City at any time in the future, and the Mayor's testimony was that the name CIO in Jersey City is thus and so, and I just want him to explain to the Court what those reasons were, and their other reasons, according to the Mayor.

THE COURT: I don't see any particular relevancy of matters in the future, as far as that goes. You didn't object at the time.

MR. MATTHEWS: Your Honor allowed an amendment to the complaint so as to permit them to do it.

THE COURT: Not as to the future.

MR. MATTHEWS: What is that, your Honor?

THE COURT: I allowed an amendment to the complaint to include events after the filing of the complaint and up to the time of the trial.

MR. MATTHEWS: Yes.

THE COURT: But not as to the future.

MR. MATTHEWS: Well, I take it your Honor would like to know why the Mayor says that any Communist or CIO agitators of the brand that has been stated in this trial by him are not allowed in Jersey City.

THE COURT: Well, as to the future, I don't see how we are concerned with that. I think it is relevant as to the past.

MR. FRAZER: May I make a suggestion to the Court? If the examination which Mr. Matthews is conducting now has any relevancy whatsoever, it is merely for the purpose of showing what the Mayor's state of mind was which led him to take the action which is the basis of this complaint. Now that, I think, is the only basis.

MR. MATTHEWS: No, your Honor,——

MR. FRAZER: I respectfully submit that if Mr. Matthews wishes to go along the line of examination which he has been going along since these instruments from which he has been so volubly reading are not substantive proof of any of the facts contained in them, that he offer what documents he believes had effect upon the Mayor's mind in speaking about the state of mind which resulted in the actions complained of; and that having produced those, and inquired of the Mayor whether those instruments were the instruments which brought about the state of mind, not in any way in dispute herein, in fact we elicited it on direct examination,

that state, that those instruments then be marked in evidence. There is no reason for us to read over and over again newspaper articles which stated a condition at a certain period——

THE COURT: Well, I don't think that particular one is permissible because of its date. Didn't you give the date——

MR. MATTHEWS: If your Honor please, he said that they are objectionable in Jersey City now, the CIO.

THE COURT: What?

MR. MATTHEWS: The CIO organizers are objectionable, as speakers, in Jersey City now, and that they are hooked up with them.

THE COURT: All right. Isn't it for me to determine, I mean in the first instance, of course,——

MR. MATTHEWS: Yes.

THE COURT: —whether that position is justified?

MR. MATTHEWS: Sure; there is no doubt about it.

THE COURT: On the past facts, not on the future.

MR. FRAZER: I might also say that it is perfectly obvious——

MR. MATTHEWS: May I address the Court without interruption, please?

MR. FRAZER: I thought you had finished.

MR. MATTHEWS: You will allow that the Court above will have to know why the Mayor said those things.

THE COURT: I do, but I don't think that the Court above has to know something as to the future, which is what that date indicates, isn't it?

MR. MATTHEWS: Why, today, did he testify, or yesterday, that those men are persona non grata or undesirables in Jersey City, and he says that these papers, these streamline papers, make them so; and I wanted to show the picture of the police being shot down and the machine guns being fired in the Akron Rubber strike, which was part of the testimony.

THE COURT: Well, of course I don't know. Is it a fact that there were any machine guns?

MR. MATTHEWS: Yes, your Honor; sure.

MR. FRAZER: This is just——

MR. MATTHEWS: Let me show you.

MR. FRAZER: —what is vulgarly called a smear campaign.

MR. MATTHEWS: No, I left that to Morris long ago. There you are, your Honor (showing a paper to the Court).

MR. FRAZER: Whose are the machine guns? Whose are the machine guns?

MR. MATTHEWS: The police.

MR. FRAZER: Oh, all right.

MR. MATTHEWS: The police were forced in that strike, in order to defend life and property, to use that method.

THE COURT: Well, I suppose——

MR. FRAZER: That's Mr. Matthews' conclusion.

THE COURT: I suppose that, sadly enough, it is a fact that in labor warfare over a period of years, labor disputes, rather, the events take on the nature of a war. I am sorry, I think everyone is sorry, that that gets to be the case.

MR. MATTHEWS: We want to show, and we have shown, from the utterances already, that the Mayor naturally was afraid to allow that kind of stuff to come into Jersey City when the experience of Akron was that.

THE COURT: Well, I am not opposing that, I am just saying that it should be shown in the past, Mr. Matthews, not in the future.

MR. MATTHEWS: This isn't a question of showing it in the future. I want to show why the Mayor objects to these people coming in——

THE COURT: Suppose, for instance, a strike had occurred over the week end and would be so reported in the newspapers, would you feel that that was relevant?

MR. MATTHEWS: Certainly, your Honor. That would only be evidence to your Honor that when the Mayor says on this stand, as the newspapers themselves quoted him this morning, that these people can't come into Jersey City, this is the reason.

THE COURT: Then I suppose you might logically say a year from now I would have to deal with this. I mean I have to deal with the litigation in the past. That is the point.

MR. MATTHEWS: You have to deal with the cross-examination of a witness from the statements he has made under direct examination.

THE COURT: No, I will exclude that on the ground it refers to the future.

MR. MATTHEWS: Your Honor will allow me an exception?

THE COURT: I will allow you an exception, yes.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: The offer being to introduce the *Akron Times* of May 27, 1938, depicting——

MR. FRAZER: No, I object.

MR. MATTHEWS: —the riot at the Goodyear plant.

MR. FRAZER: No, no, not depicting anything. Again we are making a speech for the press.

MR. MATTHEWS: Oh, I want to make my offer on the record, so it may be seen above. Depicting the riot at the Goodyear plant.

MR. FRAZER: Mark the paper; mark the paper. The offer is of that paper, mark it for identification.

MR. MATTHEWS: Mark it in evidence.

MR. FRAZER: No, not in evidence; it is not evidence of anything.

MR. MATTHEWS: Oh.

MR. FRAZER: Mark it for identification.

MR. MATTHEWS: Then I ask to have marked the *Akron Times-Press* of Akron, Ohio, of May 27, 1938, the pictures of the riot at the Goodyear plant, not the entire paper.

THE CLERK: As one exhibit?

MR. MATTHEWS: Yes. It is only the first page, of course, because it is for the pictures and the streamlines.

MR. FRAZER: Why not say the first page, then, instead of trying to designate what is in it? The first page is what you are offering. You don't have to read what is in it now.

(Marked for identification D-12.)

MR. MATTHEWS: And the same for the *Akron Beacon Journal* showing the riot on that picture.

MR. FRAZER: I object, I object. The first page; and no further comment by counsel.

MR. HERSHENSTEIN: And page 14 shows photographs, too.

MR. MATTHEWS: And Charlie tells me on page 14 there are other photographs of the riot, which I also offer.

MR. FRAZER: One moment. I object. Let him make his offer merely of what pages he is offering, and no statement as to what is on them.

(Marked D-13 for identification.)

Q. Now at page 1564 you were asked:

"Mr. Mayor, do I understand from you that the American Civil Liberties Union is an undesirable organization, to use your words?

"A. Yes, sir.

"Q. And when you say it is an undesirable organization, do you mean only its directors, or do you mean its members?

"A. I mean the heads of it. You are one of them."

Mr. Ernst is examining you.

Then you were asked if they were so undesirable was none of the directors allowed to speak—was no one of its directors allowed to speak in Jersey City, and you answered not according to the testimony before the Fish Committee of Mr. Baldwin, and you added "not according to my judgment."

That was the testimony I read you from Mr. Baldwin shortly ago, is that correct?

A. Correct.

Q. Does the fact that you believe Mr. Ernst is treasurer of the ownership of the New Masses contribute to your opinion that Mr. Ernst is undesirable in Jersey City as a speaker?

A. It does.

Q. Now, you said at page 1561 of your testimony that you made an investigation of Mr. Ernst before and after he was refused a permit, by reading about him in various reports and so forth. Now, did this information about Mr. Ernst, Mr. Thomas and Mr. Baldwin, in the Fish report, help you to determine that they would be undesirable people to address outdoor meetings in Jersey City?

A. It did.

Q. At page 1580 of your testimony you said that you read in the papers the expose of David Dubinsky, one of the electors of the American Labor Party. Now, I ask you, did you read that expose in this pamphlet that I used before of the *American Republic Magazine* concerning Mr. Dubinsky, and is that the article from which you gained your information?

A. Yes; about his activities on the Red Spain?

Q. Yes. Is that the article?

A. Yes.

MR. FRAZER: Do you want to mark that for identification? I don't think it has been marked.

MR. MATTHEWS: The whole pamphlet? Yes.

MR. FRAZER: Yes.

MR. MATTHEWS: Sure, I will be glad to mark it.

(Marked Exhibit D-14 for identification.)

Q. You also testified that John L. Brophy was a Communist, and you said that John L. Lewis denounced him. Now did you get your information, and was your source of information also this pamphlet, or part of your source of information this pamphlet which I show you, and particularly at page 21?

A. Yes, sir.

Q. Now at page 1224 of your testimony you said that Mr. Carney in a public declaration said that he was going to invade Jersey City with three thousand men. You were

shown the *Newark Sunday Call.* I now show you the *Newark News* of November 23, 1937 and ask you did you see that article?

A. Yes, sir.

MR. FRAZER: Do you want to mark that?

MR. MATTHEWS: Yes, yes, gladly.

(Marked Exhibit D-15 for identification.)

Q. Now, Mr. Frazer read the headlines of the *Call* article, and he also read the script underneath and asked you several questions as to the correspondence between the story and the headline. Now this headline read:

"CIO prepared for invasion. Mass drive by three thousand to be launched Monday in Jersey City."

MR. FRAZER: Just a minute, just a minute.

MR. MATTHEWS: May I finish my question, please?

MR. FRAZER: All right. No, I would like to interpose my objection right now.

MR. MATTHEWS: All right.

MR. FRAZER: The paper has already been marked for identification. There is no reason for your going further and describing what is in it. He says that that paper was the basis of his state of mind, part of it. That is the only purpose for which it is offered, or for which it is marked. There is no sense in reading the paper at this time.

MR. MATTHEWS: Don't be afraid because a good paper told the truth about Carney's invasion.

I want to put on this record for this man's opinion being formed the truth from a truthful statement of the facts.

MR. FRAZER: We have conceded this man's opinion.

M . MATTHEWS: All right.

MR. FRAZER: We have elicited it ourselves on direct examination.

MR. MATTHEWS: But how——

MR. FRAZER: And what can be gained by putting in paper after paper, merely to establish something which has already been conceded, to all intents and purposes?

MR. MATTHEWS: Do you concede it?

MR. FRAZER: I am perfectly willing to admit for the record that Mayor Hague believed that these people were dangerous persons.

MR. MATTHEWS: Do you concede that the CIO prepared for an invasion——

MR. FRAZER: No.

MR. MATTHEWS: —and that the Civil Liberties Union, the International Labor Defense Worker, the Defense League——

MR. FRAZER: I object; I object.

MR. MATTHEWS: —all were going to send delegations, as this article says, into Jersey City?

MR. FRAZER: I concede nothing of that. That is exactly what I have been trying to call to your Honor's attention. Mr. Matthews is continuously confusing the question of whether these statements are facts or whether they were something which Mayor Hague read which made him believe a certain thing. They are not proof in any way of what happened.

MR. MATTHEWS: Must it be that the *Newark News* is not facts and the *New York Times* or the *New York Post* is?

MR. FRAZER: They are not proof.

MR. MATTHEWS: Well, if they are not proof, they are offered to show your Honor——

MR. FRAZER: They are marked already.

MR. MATTHEWS: —that Mayor Hague had in his possession at that time, not the innocuous articles that is in the *Newark Sunday Call,* in which the headline alone spoke of this invasion, but this article spoke not only of the invasion, but of the invaders, and it mentioned the 3000 CIO invaders, it mentioned the Civil Liberties Union, one of the defendants in this case, the International Labor Defense, the Hudson County Committee for Civil Rights, all of whom were going to send delegations into Jersey City.

THE COURT: I thought that had been discussed pretty fully. What further discussion do you want?

MR. MATTHEWS: The discussion is this, that I want the record, with your Honor's permission, in this case, to show not that Mayor Hague had an article in which there was a headline that didn't consone with the reportorial facts below it, but that he also had in his possession these reportorial facts corroborative of the headline.

THE COURT: I thought the paper was already in evidence.

MR. MATTHEWS: No, your Honor, no, your Honor. I can't offer it in evidence. It is cross-examination.

THE COURT: I thought we had it offered before.

MR. FRAZER: It was shown to Mayor Hague, and he admitted that it was the first article of the kind. That was the original article from which these are rewrites.

THE COURT: I suppose the question as to whether the headline and the article correspond is for me to determine.

MR. MATTHEWS: Yes, but how would you determine, your Honor, or how will anybody above deter-

mine, that the Mayor had any other article before him unless that is in your record?

MR. FRAZER: We have marked it for identification.

MR. MATTHEWS: Oh, but——

THE COURT: Do you consent to its going in evidence?

MR. FRAZER: This article?

THE COURT: Yes.

MR. FRAZER: Evidence of what?

THE COURT: Just as it reads, not as to the truth.

MR. FRAZER: Not evidence of the truth, but that such an article appeared.

THE COURT: Was read, too, I suppose?

MR. FRAZER: And I will concede that the Mayor read it, if that helps Mr. Matthews.

Q. Now, Mr. Matthews, it is conceded that this article appears—its truthfulness is not conceded; it is in the Newark *Evening News*, and it says:

"Final plans for their invasion of Jersey City were completed last night by New Jersey C. I. O. leaders. A mass organization drive by three thousand C. I. O. representatives will be launched Monday afternoon as workers leave plants in the downtown area of the city. Aside from field organizers of International unions, more than 2800 volunteers will distribute leaflets in an area bounded by Bay and 17th Streets, Jersey City. Of that number more than 2000 will be from the International Maritime Union. Other organizations which will send groups——"

MR. FRAZER: I object, I object.

Q. (Continuing.) —"include the Civil Liberties Union, International Labor Defense, Workers Defense, and the Hudson County Committee for Civil Rights."

Now, did you have that in your possession and did that strongly incline your mind to the fact that Carney intended to invade Jersey City with these Bolshevik elements?

A. It did.

MR. MATTHEWS: That is November 23d of 1937.

MR. FRAZER: I don't suppose you want to mark it in evidence now, do you, after having read it all? Still it is in the record, why complicate it further?

MR. MATTHEWS: I would be very glad to have you use it for any purpose, if you can get any surcease out of it, or be happy.

MR. FRAZER: All right.

MR. MATTHEWS: Surcease of sorrow, I mean.

Q. Now, in that article, Mayor Hague, the International Labor Defense was mentioned as sending a delegation. Had you been familiar from your reading of the Fish——

MR. FRAZER: I object.

Q. (Continuing.) —report that the International Defense was a Communistic organization?

MR. FRAZER: I object to any testimony about the International Labor Defense. It has nothing to do with the issues here; it is no part of the issues here. It is in no way impleaded in this cause. The Lawyers Guild was excluded when we tried to offer evidence about that; that was excluded.

MR. MATTHEWS: But I am not offering this as proof of anything. I am cross-examining the Mayor as to what made him think that Carney was going to come in with a bunch of dangerous Reds.

THE COURT: Was there any statement in Mr. Carney's article about the International Labor Defense?

MR. MATTHEWS: Yes, your Honor; yes, your Honor.

MR. FRAZER: In which article? Mr. Carney's article?

MR. MATTHEWS: This is the Newark *News* (handing to Court). Your Honor will excuse the underlining.

THE COURT: All right.

MR. FRAZER: I have made my objection, sir.

THE COURT: Yes, you may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. "The International Labor Defense was formed in 1925 with headquarters in Chicago, as a Communist organization to defend class-war prisoners and for the repeal of all sedition and criminal syndicalist laws. It later moved to New York City. It provides legal aid to all Communists arrested for revolutionary activities and helps to secure bail for them. In addition, its program is as follows:

"(1) Defense of foreign-born workers and against deportation.

"(2) Gives publicity to persecution of workers.

"(3) Fights for the rights of workers to organize for self-defense.

"(4) Support to prisoners and families.

"The Active head of the International Labor Defense is John Louis Engdahl, who holds the position of secretary general. He is an American Citizen and a graduate of the University of Minnesota. He is one of the most aggressive and active Communists in the United States. He has been to Russia several times and has served on the central executive committee of the Communist Party of America in this country. Last November he ran on the Communist

ticket in New York for lieutenant governor. At one time he was editor of the Daily Worker. In addition to being secretary of the International Labor Defense, he is the editor of the Labor Defender, a monthly Communist magazine and the official organ of the International Labor Defense, with a circulation of over 20,000. It is revolutionary, outspoken in appeal in behalf of Communist principles against American institutions."

Now when you saw that article of Carney's in the paper and found that the International Defense group were going to send a delegation, did that further incline your mind that this invasion was a real invasion?

MR. FRAZER: Now, I object. In the first place, there is no article of Carney; there is a newspaper report. In the second place, the International Labor Defense is in no way attached to us——

THE COURT: Oh, I will allow it.

MR. FRAZER: I ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

Q. Were you so impelled?

A. Yes.

MR. FRAZER: Is that from the Fish report, that you were reading?

MR. MATTHEWS: Yes, Mr. Frazer.

THE COURT: It is the same one we had before, isn't it?

MR. MATTHEWS: Yes.

Q. Now, Mr. Mayor, you have also been familiar, both by yourself and with counsel, with the contents of the American Fund for Public Service, also called the Garland Fund?

A. I have.

Q. And from an examination of that fund did you know that that fund has contributed $75,000 to the International Labor Defense?

A. I do.

MR. FRAZER: Now, I object. The Garland Fund is not here in issue in any way.

MR. MATTHEWS: The Garland Fund secretary is Mr. Ernst. He says that he opposed Mr. Ernst, because of his radical proclivities, tendencies, et cetera, et al., and now one of his connections is the Garland Fund, of which he is the treasurer, the Civil Liberties Fund, the Civil Liberties group, of which he is a director. Two of the people who came into Jersey City were going to come in with the Civil Liberties and the International Defense. The Garland Fund report, which has already been used here, and which is reported in the Fish Committee report, shows that Mr. Ernst's Garland Fund gave $75,000 to this Communist organization. I submit that I am entitled to ask the Mayor did that fact also incline his mind to the belief that this invasion was a real invasion, or this proffered invasion.

MR. FRAZER: Might I ask the Mayor at this point whether he has examined this particular volume?

THE WITNESS: You mean——

MR. FRAZER: That I have in my hand?

THE WITNESS: From the Free Public Library? Yes, sir.

MR. MATTHEWS: You notice, Spaulding, don't be mislead, that the reports go a way back to here; see, Spaulding? This is the last report, January 30, 1934. Loans outstanding in 1934. There are all of your directors: Norman Thomas, Benjamin Gitlow, Morris Ernst——

MR. FRAZER: All right.

Now may I ask the Mayor when he looked at that volume?

THE WITNESS: I looked at that yesterday in my office, after we left here, as late as that, and prior to that.

By MR. FRAZER:

Q. When did you first look at it, Mr. Mayor?

A. When it was produced from the library.

Q. When was that?

A. Well, since this case. It was prior to this case being called.

Q. And subsequent to the denial of the permits?

A. No, no; oh, no.

When this uprising started, Counselor, I started to familiarize myself, as I told the Court, by selecting everything——

MR. MATTHEWS: Now, may the question be answered, if your Honor please?

A. (Continuing.) All evidence that we could possibly get control of, to examine into, to see, as to whether or not—what these activities were which would lead to the Civil Liberties and which lead to the CIO, and this was one of the books that we collected.

Q. And when did you get that first?

A. Well, whatever the date is, from the library.

MR. MATTHEWS: Now, that certificate is on my copy. The Mayor has his own copy; and the fact that the certificate is dated now is only for evidential purposes, please, Spaulding. The Mayor had his own copy. Indeed, he first personally said: "John, take it home and read it" to me.

MR. FRAZER: I haven't said anything about that.

MR. MATTHEWS: All right, but I concede that. I don't do those things.

He said he got the Garland Fund book before this trial. In fact, he gave it to me after I came into it; but I got it from Hamill.

MR. FRAZER: I was asking the Mayor when he got it.

MR. MATTHEWS: He said before the trial.

MR. FRAZER: From the public library?

MR. MATTHEWS: Yes, from the public library.

MR. FRAZER: Where? In New York?

MR. MATTHEWS: No, I think Jersey City. You can only take it out at certain times; you have to give it back and take it out again.

MR. FRAZER: What I want to know is when the mayor first got that, to find out—my purpose in asking that is to ascertain whether it did have any effect upon his action on November 29th.

MR. MATTHEWS: That isn't the question; whether or not Mr. Ernst is desirable. The only question as to the November or May 29th, or the Carney invasion, is as to the International Defense Fund.

MR. FRAZER: Can you tell me when you first——

THE WITNESS: I didn't get that prior to the Carney invasion.

MR. FRAZER: No. And did you get it prior to the first of this year?

THE WITNESS: I got that in preparation for answering these charges, and all these invasions and disturbances——

MR. FRAZER: That's when we filed our papers, when you were preparing the case——

THE WITNESS: No, I think it was prior to that. I think it was during this uprising, these troubles that

started. That's been going on close to a year, close to seven or eight months.

MR. FRAZER: Mr. Mayor, as far as I understood—

THE WITNESS: I can't exactly tell you, Counselor, the day and date and hour when we received these.

MR. FRAZER: I don't expect you to. I am not as unreasonable as that.

MR. MATTHEWS: May I at this time say that the mayor has answered, and I take it that Mr. Frazer is examining so as to object to my question.

MR. FRAZER: Well, I just wished to see whether the mayor had this before him as the basis of his mental state when the Jersey City authorities refused permits to the speakers, or whether he got that subsequently, when we had filed our complaint and you were thinking of some kind of an answer to it. Any port in the storm idea.

MR. MATTHEWS: I have no objection to your asking——

MR. FRAZER: That's all right. The mayor answered it, I guess. He said it was some time while these disturbances were going on subsequent to November 29th.

Now, what I asked him now was whether it was prior or subsequent to the rejection of the permits in December.

THE WITNESS: I can't answer that, Counselor. I can't fix any particular date or day.

MR. FRAZER: Then it seems to me that unless it be shown to come within that time, this is not proper cross-examination, as it does not bear upon the mental state.

MR. MATTHEWS: If your Honor please, the International Defense Fund was mentioned in the article. The mayor's investigation of the Fish Committee report long antedated this case, as he said.

THE COURT: Yes, but I thought we were talking now about the other——

MR. MATTHEWS: We are only for the amount of the contribution from the Garland Fund.

MR. FRAZER: That's just exactly it. Here is another effort by Mr. Matthews to prove as a substantive fact things which can be used only for the purpose of showing what the mayor's mind was.

THE COURT: When did the knowledge of the Garland Fund come to his mind?

MR. MATTHEWS: Why, the knowledge of the Garland Fund come to his mind, as he has said already, in reading the Fish report. You see, this Fish report that I have is one that I had certified by Trimble only a week ago. He has his own report.

MR. FRAZER: There is no evidence as to when he first got the Fish report.

MR. MATTHEWS: Yes, he said a year ago, in his testimony, Mr. Frazer; now, after I had connected that with the International Defense Fund, as your Honor probably allowed it, then I asked him, does he know from this report that the contributions were so much, to the International——

MR. FRAZER: He can't know that.

THE COURT: I don't see how that could bear on his state of mind. I think that is part of your affirmative proof.

MR. MATTHEWS: Oh, no, your Honor, because Mr. Ernst—my next question is: And did this contribute to your opinion that Mr. Ernst should not be allowed——

THE COURT: How could it, when he didn't see it until afterwards?

MR. MATTHEWS: Judge Clark, they are insisting that the directors of the Civil Liberties Union are persona non grata now. Now, I want to show why.

THE COURT: I am going to rule again that what is in the future is not admissible.

MR. FRAZER: I might say in this connection that Director Casey, who had charge of the granting of permits——

THE COURT: He talked about the Garland Fund last year. I remember that.

MR. FRAZER: Director Casey said that they made no investigation at that time.

MR. MATTHEWS: I don't care anything about what Director Casey said.

MR. FRAZER: Well, he is the one that had the authority for refusing.

MR. MATTHEWS: I thought you said the mayor had the authority.

MR. FRAZER: No, but he is the one that took it up.

THE COURT: I remember that in Director Casey's case he was talking about the Garland Fund, in the proceedings last year.

MR. MATTHEWS: But not this kind of talk, your Honor. This today hooks up this Civil Liberties Union and Baldwin and Mr. Ernst and Mr. Thomas with the activities that are——

THE COURT: I think if you will examine the record of last year you will find we had this same thing.

MR. MATTHEWS: Well, I am glad——

MR. FRAZER: Yes. It is a regular stock in trade. It comes up and these incendiary remarks are read from the Fish report.

MR. MATTHEWS: Incendiary remarks! Those are American remarks from the Congress of the United States, and if you, Spaulding, don't disagree with your retainer, don't make that statement, because I cannot believe that you disagree with the facts.

MR. FRAZER: I know, but you like to re-enact the facts, as you say, by reading a story which was published some seven years ago, over and over again.

MR. MATTHEWS: Yet the truth never grows old. The real truth never grows old; it is eternal.

MR. FRAZER: Come on, let's get down to the facts of the case.

MR. MATTHEWS: O. K., we have them.

MR. FRAZER: Let's get down to the facts.

By MR. MATTHEWS:

Q. Now, Mr. Mayor, at page 59 of the Fish report which you read, or which I read to you, and dealing with the Garland Fund, you recall that I read you that there was a contribution to the International Labor Defense——

MR. FRAZER: Why reread it?

Q. (Continuing.) —of fourteen thousand—let me follow it—fourteen thousand eight hundred and fifty dollars?

A. I do.

Q. Yes.

Q. I show you a clipping from the *Boston Post* of June 10, 1938, "Children given prizes as Reds." Did you examine that?

A. Yes, sir.

Q. Now, Mr. Mayor——

MR. FRAZER: What, may I ask——

MR. MATTHEWS: (Addressing a member of the press): I don't like you laughing at my questions, young man, and I ask the Court not to have him do it. I don't know what paper you are from, but don't do it.

THE COURT: I am not inclined to control anyone's merriment.

MR. MATTHEWS: I know your Honor wouldn't want any reporter who was supposed to be a dispassionate recorder of the facts interrupting, he can tell me so, if he didn't. (To Mr. Frazer): You will have headlines enough, old dear, to last you for some time to come.

Q. Now, Mr. Mayor, you made the statement in your testimony that the Communists were people who were trying to destroy the United States and destroy all religion. Have you any information about Senator McNaboe, of New York, which together with that article which I show you now helped you to form that opinion which you gave to Mr. Frazer?

A. I have. This covered school children.

Q. Yes.

A. The McNaboe Committee—he is a senator from New York City.

MR. FRAZER: Now, this is not supposed to be offered as facts, is it?

MR. MATTHEWS: No, this is just to explain his statement as to what you wanted to hold him to as his definition of what Communism is.

MR. FRAZER: I didn't ask him anything about what Mr. McNaboe told him.

A. Nobody told me anything, this is fact.

MR. FRAZER: That is just what I am objecting to, Mayor.

MR. MATTHEWS: On which he predicated his statement in the record.

MR. FRAZER: What is the date of this paper, Mr. Matthews, that you just handed the mayor, June 10, 1938, again, sir. Now, I object to any examination

upon the mayor's state of mind based upon matters which he has read during the progress of this trial.

THE COURT: Sustained.

MR. MATTHEWS: That is not the purpose of this question. Read the question, please—why can't the mayor put himself in this record on cross-examination on the facts which impelled him to take the position that he has today and previous to today on this issue against this kind of stuff that are suing him?

MR. FRAZER: Now, I object to that kind of a reference, and I think it is about time that Mr. Matthews be controlled in his language.

MR. ERNST: If your Honor please, this is a court of law. We are determining some issues. I ask that Mr. Matthews withdraw the mark when he says I am "cattle" and "stuff" and "that piece of humanity." I do not resent anything that he says about me except that he is saying it in a court of law and I resent that the forums of the courts of America be used by Mr. Matthews as Jersey City uses the workers, and I ask you, your Honor, to comment on those statements.

THE COURT: I will strike them.

MR. ERNST: I have made no statements about Mr. Matthews personally. I have disregarded his discourtesies. The four other counsel for Mayor Hague were gentlemen. Mr. Matthews sneers, comes over with side remarks, snoops and listens to what we are saying and I ask your Honor to comment on it.

THE COURT: I will strike it.

MR. MATTHEWS: I want to add to that by saying I will put his record as divulged here this morning against mine any time. I have said nothing like he says at all. The day that I started the examination in this case he said to a witness, "Spill it, go to it." That may

be a dignified thing. Then he says I snooped because I heard it. Now, I don't want to talk about him or to him as far as I am concerned, I haven't even referred to him this time, I looked in his direction but I was referring to the petitioners in this case.

MR. ERNST: I take it the same statement applies to your other remarks?

MR. MATTHEWS: No, the other remarks on the record as far as I am concerned stand 100 per cent. unembellished.

MR. ERNST: Your Honor, I ask you to make a statement at this time in respect to the Federal Courts of this nation——

THE COURT: I have always understood, perhaps erroneously, Mr. Matthews, that personalities, whether directed at the parties or at counsel, in a court of law were inappropriate and I will strike them all from the record.

MR. ERNST: Thank you very much, sir.

MR. MATTHEWS: And the same as to his.

MR. ERNST: I made none.

THE WITNESS: Am I permitted to make a statement, Counsel?

MR. ERNST: Let us try a case at law.

MR. MATTHEWS: I object to this gentleman saying "Let's try a case at law." If he is hurt this morning that is no time for his trying to take the sting out of it by an appeal to the newspapers.

THE COURT: Please proceed.

MR. ERNST: I take it the remarks are out of the record, your Honor.

THE COURT: Yes.

MR. MATTHEWS: And his remarks concerning me.

MR. ERNST: If any.

THE COURT: All personal remarks, they have no place in a lawsuit.

MR. MATTHEWS: Is there a question pending?

(Question and answer repeated by the reporter.)

THE COURT: Isn't it a fact that the McNaboe Committee made some report almost a year ago?

MR. MATTHEWS: They did not make any report. What the mayor wants to say is that the McNaboe Committee organized—he wants to tell the Court what the situation was—I don't want to tell the Court his testimony, and it dealt with this proposition.

A. It dealt with school children, it dealt with that Morris Ernst stopped the investigation. The committee never met, the committee was never permitted to meet. I want to make the statement, I want to show the influence that the Communists has got in this country. I never heard of such a thing, that a committee can be silenced that is organized to investigate Communism in the public school system and the institutions——

MR. FRAZER: If it please the Court, will you ask the witness to desist?

THE COURT: There is no evidence to that effect.

MR. FRAZER: Will you strike those remarks from the record, if it please the Court?

A. Do you mean to tell me I am not permitted to make a statement here concerning the prosecutor in this case?

MR. FRAZER: May I ask the Court that the witness do not make any more remarks and may I move that the remarks be stricken?

THE COURT: Yes.

MR. MATTHEWS: Do I understand that the mayor is not to tell what the connection is between the children and the deprivation——

THE COURT: My ruling is that that newspaper article was published after the trial began. I therefore sustain the objection. You may have an exception.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Well, the Reich—may I argue just a moment—the Reich article yesterday was offered; he was asked whether he believed in certain things predicated on that article. Your Honor well remembers that.

A. They asked me about the Harvey statement, your Honor. That involves public schools and Harvey charged the public schools with Communism.

THE COURT: Please, please. I cannot see the purpose of it. I understand—I have that report right here, someone sent it to me. Why don't you offer the report?

MR. MATTHEWS: There was no report.

A. There was never a report, your Honor; the committee never met.

MR. MATTHEWS: The committee never organized. That, your Honor, is an entirely different matter. That is in the Gerson matter, I suppose.

THE COURT: No, the report they sent to me was widely advertised in the newspapers as having been made by a committee of the Massachusetts legislature.

MR. MATTHEWS: But the McNaboe was New York.

THE COURT: That is a Boston paper, isn't it?

MR. MATTHEWS: Yes, but I asked him if that—I called his attention to that and asked if he had any information about McNaboe with reference to this.

THE COURT: I think I read that article, somewhat hastily, but my impression is it has something to do with the report I have in my hand.

MR. MATTHEWS: It has, your Honor.

THE COURT: Nothing about Senator McNaboe.

MR. MATTHEWS: That would be competent as cross-examination.

THE COURT: You will have to offer Senator McNaboe. We cannot go on having these hearsay statements. If you want to call him as to what he says was done in Boston——

MR. MATTHEWS: Judge please, there is no report; he wanted to show——

THE COURT: There is the report, Mr. Matthews; I have it in my hand.

MR. MATTHEWS: No, please, Judge.

MR. FRAZER: I object to counsel stating what the witness would have stated had he been permitted to go on. Another speech. I object to another speech.

MR. MATTHEWS: I am not going to offer anything that he would have said at all. The purpose of this question is to disclose what the Mayor was asked about on direct examination, namely, about children and religion.

THE COURT: Well, you will have to give me in the recess the question that you particularly referred to, and let me read that newspaper article.

MR. MATTHEWS: Yes. Well, I will get you that question because that is a question that one of my associates propounded.

THE COURT: All right, give me the page and I will read it for my own record.

MR. MATTHEWS: Yes, Judge. That isn't marked yet, I understand. I can get you that reference at recess.

THE COURT: We will adjourn now until two o'clock.

THE COURT: You might get me the reference to the Nazi thing also.

(Recess.)

AFTERNOON SESSION.

2:10 P. M.

THE WITNESS: I want to apologize, Judge.

THE COURT: That's all right. I was very irregular yesterday.

MR. MATTHEWS: We are sorry, but we couldn't possibly get along with the mayor; everybody stopping him.

THE COURT: That's all right. I was to blame yesterday.

MR. ERNST: If your Honor please, I rise to move the Court on a matter of peculiar importance, and I hereby move that you hold the witness Frank Hague in contempt of court for the following reasons and set of circumstances:

Evidence was excluded by your Honor in relation to one McNaboe. I was confronted a few minutes ago by members of the press who read to me what purported to be a statement which Frank Hague uttered to them in a conference by him. The statement, if your Honor please, directed itself to the very facts which were denied admission in this case. But further, sir,

that statement, as it was read to me by the members of the press at the conference, accused me, a member of the bar, of having wrecked a senatorial investigation committee in the State of New York, of having been responsible for calling it off.

That means, if your Honor please, that I, not a member of the legislature, was instrumental, and it could only have been by nefarious means, in calling off all of the members, or a majority thereof, of a legislative committee of the State of New York.

Now I am not concerned with the resentment that they may feel at the statement, but this is just the last step in a campaign of not trying this case in court.

May I add, your Honor, that the members of the press asked me if I wished to comment on the statement. I told them that I did, and I told them that our comment was that we were trying this case in a court of law and that our statements would be produced through witnesses on the stand before your Honor.

MR. ERNST: That statement of this witness at the conference which he called has been circulated to the press. We have a similar case on the same point of law now pending in the courts of the State of New York. I do not ask your Honor to pass on this contempt motion at this moment, I wish to brief the matter for you, and I refer you at this momnet to a case now pending before Referee John Kirkland Clark, sitting by appointment of a Judge of the Supreme Court of the State of New York, where it is charged by one of the attorneys before him that statements were issued by the other attorney or by the parties, I do not recall which, circulated in print, and that motion is now pending in that case. I therefore charge that contempt has been committed. I move that you hold the witness for contempt and I ask the opportunity of supplying a brief to you by Tuesday of next week.

THE COURT: I suppose you should file something in the form of affidavits or otherwise.

MR. ERNST: I have this situation——

THE COURT: With the motion papers.

MR. ERNST: May I call this to your attention: I do not know the law in the State of New Jersey with regard to the extent of the privilege of a reporter; it will be my affidavit that they read me the statement.

THE COURT: There is a federal provision, I think, about contempt of court in federal courts, Section 268 of the Code, not the U. S. Code Annotated, the Judicial Code which covers contempt in criminal courts. My recollection with respect to witnesses or attorneys is that if they make any statement it has to be an attempt to influence the court, I mean that is my recollection of the law, but I haven't looked it up recently.

MR. ERNST: That may be a secondary question to which the cases, as I recall it, direct themselves, because that goes to the question of motive and the motive might have only been to put something in print in the newspapers, so that when the witness reads it again it can be claimed that he made up his mind on the strength of what he read in the newspapers.

MR. MATTHEWS: I object to that statement. I don't know anything about this that Mr. Ernst is informed about.

MR. ERNST: May I say that I am informed that none of the counsel for the witness were present at the conference. I overlooked it.

MR. MATTHEWS: As far as reading it or anything of the sort, I think the mayor can tell about it if he has had any conference.

THE WITNESS: Am I permitted to answer?

THE COURT: Mayor Hague, you can answer the affidavits if they are filed.

THE WITNESS: If I offended the Court I want to apologize to the Court; I done it with no intention of offending this Court, your Honor. I have the utmost respect for the Court.

MR. MATTHEWS: I know nothing about it.

A. It was a very important statement, your Honor, to the country. I felt that the Communists, to silence a committee that sets itself up to investigate Communism in public schools of the State of New York, and that they was silenced by that man, as I charge it, then I say it is a serious question for the country to know that the Communists can sway that type of influence.

THE COURT: You will file the memorandum.

MR. ERNST: Well, the mayor having volunteered the statement, may I say something too?

MR. MATTHEWS: Will you wait till I finish my examination?

MR. ERNST: No, this is not in connection with the direct or cross-examination. This is a little speech in addition to——

THE WITNESS: Yes, but he made a little speech too.

MR. ERNST: Would you let me examine you on your statement that I caused a legislative committee of the State of New York not to do its duty?

THE WITNESS: You are going to examine me. You will have a chance to examine me, and I am not afraid of you; you must understand that.

MR. ERNST: All right. I will do it in due time.

THE WITNESS: I have no fear when I am taking the side of the American people.

THE COURT: Give counsel a copy of the affidavits, will you, Mr. Ernst, when you file them?

MR. ERNST: I shall, sir.

MR. MATTHEWS: Shall I proceed, your Honor?

THE COURT: Yes, if you will.

CROSS-EXAMINATION (Continued).

By MR. MATTHEWS:

Q. Mr. Mayor, at page 1461 of your testimony, Mr. Frazer referred to Mr. Baldwin's conviction in Passaic County, and you referred to the fact that that conviction was sustained by Chief Justices Gummere, Black and Lloyd in an opinion by Black.

A. That's in the branch.

Q. Yes.

MR. FRAZER: If it please the Court, when that statement was made, the Supreme Court had been reversed by the Court of Errors and Appeals, a fact which the mayor very well knew, because he admitted it on the stand, and even told me who the men below were, and said they were pretty good judges, and I called his attention to the judges above——

MR. MATTHEWS: No, what I want——

MR. FRAZER: —and he admitted they were pretty good judges, too.

MR. MATTHEWS: I am sorry.

MR. FRAZER: But I see no relevancy in referring to the Supreme Court opinion.

MR. MATTHEWS: What I want to do; if your Honor please, is ask the mayor whether or not his opinion of unjust assembly or of public assembly consones with the opinion in this case?

THE COURT: Well, perhaps it does, but——

MR. MATTHEWS: Then, your Honor, I want to take the opinion, just as they did, the opinion on appeal, and I want to show on this record and through this witness that his opinion——

THE COURT: Excuse me, Mr. Matthews. I want to put on the record the proper section governing contempt. It is section 385 of the U. S. Code Annotated. Yes, I knew there was one case; I had it once before; Lieber v. The United States, 170 Federal, 881. The United States Attorney was charged with issuing a statement seeking to influence a judge.

MR. MATTHEWS: Now, if your Honor please——

THE COURT: I beg your pardon, Mr. Matthews.

MR. MATTHEWS: That's all right, pardon me. What I want to do is read the definition of lawful assembly from both opinions, because both opinions quote the same source for unlawful assembly, and then I want to ask the mayor whether or not it was his opinion as to the right or non-right of people to assemble in Jersey City in a public square.

THE COURT: Well, have you indicated that the mayor had read those two statements?

MR. MATTHEWS: He has actually said so, your Honor, and he called Dean Frazer's attention to the upper court case, too.

MR. FRAZER: He didn't say that he had read them. He said there were such—as I recall the testimony, I don't wish to misquote it.

MR. MATTHEWS: You asked him if he was familiar with it, and you read from the opinion and he said yes.

MR. FRAZER: I read from the other opinion.

THE WITNESS: Justice Kalisch's opinion.

MR. FRAZER: Justice Kalisch's opinion, yes. I read from the other opinion.

THE WITNESS: You didn't read Justice Black's.

MR. FRAZER: What I asked him on direct was, why it was that——

THE COURT: Did he say he did not read Justice Black's opinion?

MR. MATTHEWS: Justice Black's opinion had not been read, he said. Justice Kalisch's opinion.

THE COURT: Well, do we need that?

MR. MATTHEWS: Well, we need it to this extent—

THE COURT: I thought he said he never read it.

THE WITNESS: No, I said—he read Justice Kalisch's opinion to me.

THE COURT: Oh. Well, did he read Justice Black's opinion?

MR. FRAZER: I don't think the mayor has said yet that he ever did. He said he was familiar with that opinion——

THE WITNESS: I am familiar with the case in the branch and in the Court of Appeals.

MR. FRAZER: Yes, but you have never read the opinion, either of them, have you?

THE WITNESS: Yes, I went over it frequently. I find it necessary that I must familiarize myself with all these opinions, because I am confronted with them every day.

MR. FRAZER: Well, I supposed you had been advised, Mayor, by your law department, as to it.

THE WITNESS: The law department, Counselor, as a rule, is always conferring with me and reading these opinions. and I am going over them frequently.

Q. Now, in that opinion at page 45, it is reported in 104 New Jersey Law at page 45, it is reported 104 New Jersey Law:

"An unlawful assembly at common law has been defined in the reported cases and by text-book writers of recognized authority, thus:

"Unlawful assembly in general—an unlawful assembly has been defined to be an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighborhood of the assembly reasonable grounds to apprehend a breach of the peace in consequence of it.

"Professor Wharton defines unlawful assembly thus: Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose; and this has been held to be the case with disorder got up suddenly, though concertedly, at a town meeting, and at a social assembling for dancing. In determining the question of terror, it has been said that the jury are to consider whether natural and firm men, in charge of families, would have under the circumstances cause for anxiety; and in testing this it is necessary to take into account the hour at which the parties meet, the language used by them, and the acts done. An unlawful assembly does not in itself involve any overt act. If overt acts of violence are attempted the offense is a riot."

Were you conversant with that statement in Justice Black's opinion?

A. Yes, sir.

THE COURT: I think it is from Blackstone, as a matter of fact, isn't it?

MR. MATTHEWS: No, that's from Wharton, your Honor. Now whether Wharton took it from our old friend, I don't know.

MR. FRAZER: Yes, I think he probably did.

THE COURT: Well, we will try to find out.

MR. MATTHEWS: Yes.

Q. Now you also said that you were familiar with the opinion of Justice Kalisch—that is in the same volume, in the Butterworth case; the Butterworth is 104 New Jersey Law at page 582. The Justice says:

"The result of a careful examination of the cases dealing with this particular branch of the criminal law may be tersely summed up as follows: At common law, any gathering together of three or more persons, with intent to disturb the public peace, accompanied by some overt act or acts to effect that intent, was an unlawful assembly."

Then the Court went on; citing the Cunninghame case:

"Judge Charles in charging the jury said: Now, with regard to an unlawful assembly, what is an unlawful assembly? That has been laid down by the very highest authorities in these terms: An unlawful assembly is an assembly of persons with the intention of carrying out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighborhood of such assembly ground to apprehend a breach of the peace in consequence of it. An unlawful assembly, according to the common opinion, is a disturbance of the peace by persons barely assembling together with an intention to do a thing, which, if it were executed, would make them rioters, but neither actually executing it or making a motion towards its execution."

Now, were you familiar with that statement of unlawful assembly as recited in Justice Kalisch's opinion?

A. I was.

Q. And you were familiar, were you not, with the decision in Justice Kalisch's case overruling the conviction of Butterworth and the rest of them, and were you familiar with this statement of the Court in conclusion, and giving the ground for the reversal:

"As has already been mentioned, no circumstances were proven which tended to reasonably indicate that there was not only a common purpose on part of the defendants to disturb the public peace, that there was a well-founded threatened danger of a breach of the public peace.

"The trend of the testimony was that the object of the meeting was to protest publicly against action taken by the police authorities which prevented the strikers from holding their meetings to vent their grievances in a public hall. The object of the meeting, therefore, was per se not an unlawful one, and an indictment for unlawful assembly could not properly be predicated upon the mere fact of holding a meeting in a public place. It was essential in order to constitute an offense of 'unlawful assembly' that the meeting be held and conducted in such a manner as to reasonably create in the minds of firm and courageous persons a well-founded fear of threatening danger to the public peace. We find an utter absence of any such proof.

"Again referring to one of the incidents——" and the Court referred to that.

"From the record before us we find nothing in the statement of the facts contained therein which warranted the finding by the trial judge that the accused were guilty of the offense of unlawful assembly."

Now, Mr. Mayor, were you conversant that those were the findings of Justice Kalisch in brief summarized?

A. Yes, sir.

Q. Now, in all of the instances cited in your testimony and referred to in questions to you on the stand of permits being refused, those permits were refused, were they not, in order to prevent disorder?

A. They were.

Q. And in both the case of Mr. Thomas and Mr. O'Connell they attempted to hold the meeting when the permit had been denied, isn't that correct?

A. Right.

Q. And at that time that O'Connell was denied the permit I understood you to say on direct examination—am I correct—that you had information tending to show that O'Connell was a person who would incite to riot.

MR. FRAZER: I don't recall any such statement. Have you the reference, Mr. Matthews?

MR. MATTHEWS: I am sorry, I haven't the testimony reference there, but I would be glad to get it for you.

Q. I will reframe the question. Did you have information about Mr. O'Connell which led you to suppose that his presence at a meeting would cause disorder in Jersey City?

A. Yes, sir.

Q. Now, Mr. Mayor, when Dean Frazer read you from DeJonge v. State of Oregon, reported in 57 Supreme Court, at page 255, etc., Mr. Frazer read this to you—will you listen carefully now—at page 260, gentlemen: "It follows from these considerations that consistently with the Federal Constitution peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be observed, is not as to the auspices under which the meeting is held, but as to its purpose, not as to the relations of the speaker but whether their ut-

terances transcend the bounds of the freedom of speech which the Constitution protects."

Now, in any of the instances where these gentlemen referred to in the testimony requested permits to speak in Jersey City had you before you, either from newspapers or documents or from information which you considered reliable, utterances of theirs which transcended the bounds of the freedom of speech which the Constitution protects?

MR. FRAZER: Just a moment. We are getting into another of these factual situations again. He says "Did you have utterances." Did you believe—if you wish to, that they had made statements or something of that kind, but no facts.

MR. MATTHEWS: I am only crossing him on what Mr. Frazer asked.

THE COURT: You may answer.

Q. You may answer, the Court said. Did you have such utterances in your mind at that time?

A. Did you have what?

Q. Utterances that Mr. Baldwin——

A. That rendered them undesirable?

Q. Speeches that transcended the bounds of free speech under the Constitution.

MR. FRAZER: Just a moment, I don't think that this witness can be called upon to come to a legal conclusion as to what transcends the Constitution.

MR. MATTHEWS: I agree with you.

THE COURT: The question certain squinted in that direction.

MR. MATTHEWS: Omni comparatio claudicat.

Q. Suppose I reframe it. In refusing permits to Mr. O'Connell and Mr. Thomas had you knowledge, either from the prints or from documentary evidence or reports of speeches, of utterances made by them which in your opinion transcended the bounds of free speech?

MR. FRAZER: No, I don't think he can ask as to what transcends the bounds. The Mayor has put it better in his counter-question to counsel "Did he believe these men were of a kind which in his mind made them undesirable."

MR. MATTHEWS: That is very lovely of you to frame my question, Spaulding. Now, certainly what the Mayor thought of what these utterances were—he has been tested by Mr. Frazer and Mr. Ernst on direct and asked "Did you rely on that?"

THE COURT: Yes, I will allow that.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Did you have information that they had made utterances which transcended the bounds of free speech?

A. In Mr. Baldwin's case, I am familiar with the Fish Committee's investigation of Mr. Baldwin, I am familiar with his utterances under oath, his statement under oath answering the questions of the chairman when he said he believed in the overthrow of the Government, when he said he believed——

MR. FRAZER: Now, I beg your pardon, Mr. Mayor, but that wasn't the question.

(Question repeated by the reporter.)

MR. FRAZER: Now, that is capable of a yes or no answer.

Q. You can answer yes or no, that's all I want.

A. Yes.

Q. Now, Mr. Mayor, particularly did you tell Mr. Frazer in your direct examination that you were conversant with the opinion of Chief Justice Gummere, the late lamented Chief Justice, in Harwood v. Tremble, reported in 97 N. J. Law page 173; is that right?

A. The Rahway case. I am familiar with the Chief Justice's opinion.

Q. In that opinion were you familiar with this statement of the law—this being a Court of Errors and Appeals decision, your Honor.

THE COURT: I have read it.

Q. "The streets of a city are common highways primarily designed for the use of the public in passing and repassing, and in such temporary occupancy as is incidental to the exercise of those rights. No one is justified in obstructing the public street by collecting therein a large assemblage of people for the purpose of delivering an address to them. The common highways of the state are not designed for the purpose of holding public meetings therein and anyone who attempts to do this without having first obtained permission from the public authorities in charge of such highways commits a public nuisance. The constitutional guaranty of liberty of speech no more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty than it permits him to occupy in invitem the private property of a fellow citizen for the same purpose. In order to protect the public in the full enjoyment of the city streets the municipal authorities are clothed with the power of seeing that such enjoyment is not necessarily interfered with and in the exercise of that power to take all reasonable steps to prevent such interference."

Were you conversant with that?

A. Yes, sir.

Q. And in the instances of the refusal of permits it was a refusal in your belief which was confirmed by this opinion, by the ordinance of your city and by the state laws, is that right?

MR. FRAZER: Now, Mr. Matthews is testifying completely for the witness.

MR. MATTHEWS: No, I am cross-examining him on your direct.

MR. FRAZER: I had no direct upon the subject of the Tremble case. The Mayor merely inquired whether I was referring to the Rahway case and I said I was not.

Q. And, of course, Mr. Mayor, as I understand it, you understand, don't you, from that case that those deal entirely with meetings in public streets and not in halls?

A. I did.

MR. MATTHEWS: May I have, Mr. Frazer please, the exhibit which is your letter to the Mayor?

MR. FRAZER: It is in the clerk's hands.

Q. Now, I show you P-13, Mr. Frazer's letter to the Honorable Daniel J. Casey, etc., of December 23, 1937, which has been marked P-13 in this case, and I ask you whether or not in Mr. Frazer's letter he did not say, "The meeting will be addresed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri, and John Kiesler."

A. Yes, sir.

Q. That letter was dated December 23, 1937, was it not?

A. Yes.

MR. FRAZER: That letter is in evidence and he has already so testified, Mr. Matthews.

MR. MATTHEWS: All right. My question is directed to that, for the record.

Q. At the time that you received that letter were you in possession of information that Jerry O'Connell and Roger N. Baldwin and William J. Carney were persons who were likely to create disorder in your community if permits were given to them?

A. I was.

Q. I now show you Exhibit 12 in this case, letter from Mr. Rothbard to Daniel J. Casey, December 13, 1937, and I ask you if in that letter you see that "The undersigned will have as speakers Congressmen Maverick, Jerry O'Connell, Allen and Morris I. Ernst," is that correct?

A. I do.

Q. And at that time did you have information in your possession that the presence of Mr. O'Connell or Mr. Ernst as a speaker at a public highway meeting in your community would be such presence as would be likely to create disorder?

A. I did.

Q. And is that why the permits were refused?

A. Yes.

Q. Yesterday I think it was, but anyway shortly back, Mr. Ernst inquired of you about SWOC, I think he called it, Steel Workers Organizing Committee. Did you have any correspondence with the Steel Workers Organizing Committee in Jersey City recently?

MR. FRAZER: Did I refer to the SWOC?

MR. MATTHEWS: Not you, Mr. Ernst. I can get it for you out of the testimony.

THE COURT: I can tell you what it was, I think I can at least; it was a list of the CIO unions.

MR. MATTHEWS: That was Communistic.

MR. ERNST: Oh, oh.

THE COURT: It was a list of the CIO unions by name.

MR. MATTHEWS: No, you said you wanted such a list, didn't you?

THE COURT: No, Mr. Ernst referred to such a list, I think Mr. Ernst probably will remember.

MR. FRAZER: I know of no examination.

MR. MATTHEWS: Oh, yes, because I remember the name SWOC.

THE COURT: What was it, Mr. Ernst, because that name struck me also?

MR. ERNST: It was connected up with the testimony that Frank Hague, as vice-chairman of the National Democratic Committee, would repudiate contributions from various CIO unions.

THE COURT: Naming them.

MR. ERNST: Yes, I specified particularly SWOC and the rubber workers in the case of Frank Murphy and the United Mine in the case of Senator Barkley.

MR. MATTHEWS: That is not the testimony that I have in mind.

Q. Have you a CIO union in the steel workers in Jersey City?

A. Yes, Crucible.

Q. Now, you made the statement, Mr. Mayor, on direct examination that you have had no trouble with legitimate organizations of union men in Jersey City? Is that correct?

A. That is true.

Q. Did you have any relationship of any kind with the Steel Workers Organizing Committee in Jersey City?

MR. FRAZER: I don't think that is cross-examination.

MR. MATTHEWS: I do.

MR. FRAZER: I don't know of any question that was asked as to the Mayor's relations with that union.

MR. MATTHEWS: Now, if your Honor please——

MR. FRAZER: I would like to have a reference to the place.

THE COURT: I don't remember any testimony about the Crucible Steel, I may be wrong, Mr. Matthews.

MR. MATTHEWS: I am not addressing it on that point. I want to show now from the Mayor, those facts on this cross-examination which were not brought out on direct, indeed were not sought, which would show that his relationship with all types of organizing in Jersey City that was legitimate was a relationship of friendliness and helpfulness, and I have a letter signed by Mr. Samuel McCombs, president of Local 1339 of the Steel Workers Organizing Committee, which will carry out that statement to the Court, which will show the Mayor's attitude toward the labor people in this community, which has been questioned on greatly in direct examination.

THE COURT: I think that is a matter of defense.

MR. MATTHEWS: Oh, no, it is only to show—they have tried to leave an opinion from this witness, their own witness, you know—they have tried to leave an opinion that he had no relationships with organized labor in this community except the relationship of preventing picketing. Now I want to show by this letter what the relationships were.

THE COURT: Is the letter from a CIO union?

MR. MATTHEWS: Yes, from the Steel Workers Organizing Committee, CIO, Lodge number so and so, in Jersey City.

MR. FRAZER: If he wants to prove what he has received from that committee, if it is relevant as a matter of defense, he can do so. I did not examine the Mayor upon that at all, neither did Mr. Ernst. If they want to put that on as a matter of defense they are free to do so.

MR. MATTHEWS: We are putting in no defense now.

MR. FRAZER: Then, we will bring up the question of its relevancy.

THE COURT: I don't think there is any question it is a matter of defense, Mr. Matthews.

MR. MATTHEWS: If your Honor please, may I argue with you a bit on that?

THE COURT: I don't quite understand its purpose. Isn't this union a part of the organization of which Mr. Carney is the head?

MR. MATTHEWS: I don't know anything about Mr. Carney in that union, but I wanted to show——

THE COURT: Well, it says on the letterhead—of course, there is no jury here, so I don't think we need to be mysterious about it.

MR. MATTHEWS: That's all right.

THE COURT: It says on the letterhead C. I. O.

MR. MATTHEWS: Yes, that's right; Mayor Hague has said that it isn't the rank and file of the CIO that he quarrels with, but it is certain leaders among them, and he mentioned those.

Now, through that letter I want to show how intimate his relationships were, and how decent were the amenities between both the organizers and the Mayor in his city.

MR. FRAZER: That may be a proper thing in defense.

THE COURT: Well, let's have the man here. What's his name, Mr. Matthews? I can't read it.

MR. MATTHEWS: There isn't any necessity of that.

MR. FRAZER: I think he should be called, if you are going to put the letter in.

THE COURT: Yes. What's his name?

MR. MATTHEWS: McComb.

THE COURT: I think Mr. McComb should be a defense witness. I will rule against that.

MR. MATTHEWS: Your Honor will allow me an exception?

THE COURT: You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

MR. MATTHEWS: May I put on the record the purpose, without stating what is in the letter?

THE COURT: Just put the letter in for identification.

MR. MATTHEWS: I don't care to offer it for identification at this time.

THE COURT: All right.

MR. MATTHEWS: So long as you don't allow it used.

THE COURT: All right.

MR. FRAZER: Might I mark it for identification?

MR. MATTHEWS: No. You subpœna it, Spauld.

Q. I show you a letter, the Millinery Workers Union—no, I had better show you the original, because it is a photostat.

MR. FRAZER: Now, we have no Millinery Workers Union, even mentioned in the case.

MR. MATTHEWS: You have sweat shops, though, and if you will just be a moment patient, don't try to bar everything out, I will give it to you.

MR. FRAZER: Well, Mr. Matthews, if you want to start your defense now, that's another matter.

MR. MATTHEWS: Oh, Spauld, behave, now, like a good boy.

Q. Are you familiar, just say yes or no, to this, with this letter which I show you from the Milinery Workers Union, addressed to Commissioner Casey at the City Hall, dated June 13, 1938?

MR. FRAZER: 1938?

MR. MATTHEWS: 1938, this year, this month, last week; the day before Flag Day; this week, wasn't it?

MR. FRAZER: It is Monday, eh?

MR. MATTHEWS: Yes.

A. Yes, sir.
Q. Do you know the Atlas Hat Company in your city?
A. Only just by reputation.

MR. FRAZER: This is wholly irrelevant.

THE COURT: May I see that letter, too?

MR. MATTHEWS: Pardon me. Yes, your Honor, I am sorry.

THE COURT: That's all right.

MR. FRAZER: There has been no direct examination about the Atlas Hat Company.

MR. MATTHEWS: There was a lot of testimony here that the Mayor was preventing the organization of sweat shops. That's a letter to show how he co-operated and how they praised him for having driven a sweat shop out.

MR. FRAZER: Now, Mr. Matthews has made another speech.

MR. MATTHEWS: No, that's just a statement.

MR. FRAZER: No.

THE COURT: Well, I think of course, Mr. Matthews, you will have to call a witness, but I think the Mayor stated at some length his position about sweat shops.

MR. MATTHEWS: Can't I cross-examine on that?

THE COURT: No.

MR. FRAZER: Not cross-examine the Mayor as to testimony of other witnesses. That's what you are attempting to do.

MR. MATTHEWS: Now, listen; I am talking to the Court. Can't I cross-examine the Mayor? Can't I cross-examine the Mayor on what he has done about sweat shops? Because——

THE COURT: I think he said with some clarity what he had done about them and what he thought about them.

MR. MATTHEWS: Let me just ask this question and it can be objected to, if he wants to.

Q. Through your co-operation and the co-operation of your department was the Millinery Workers Union organized and did they receive a six dollar a week increase——

MR. FRAZER: I object.

Q. (Continuing.) —and a thirty-five hour week——

MR. FRAZER: I object, I object, if the Court please.

THE COURT: You will have to call somebody within whose knowledge those facts are. You may have an exception.

MR. MATTHEWS: All right. I ask for an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

MR. MATTHEWS: Now, with all due respect to you, Spaulding, I wish that I could be uninterrupted by the remarks back there.

MR. FRAZER: He was speaking to me.

MR. MATTHEWS: I know he was, but so loudly that he was interrupting me.

MR. FRAZER: I am sorry.

MR. MATTHEWS: I know you are. I believe in your sorrow.

Q. Now, Mr. Mayor, at page 1510 of your testimony Mr. Frazer read you a letter to Senator Stout, the Democratic State Senator from the County of Hudson and our state, and that letter had to do—it was from you to him, as I recall it—with the anti-injunction bill that was then pending in the legislature or about to be introduced, and you said you would like to be heard on the anti-injunction bill. They didn't want to hear you. I do. What is it?

A. The anti-injunction bill has been a bone of contention for a long while in this state. It has appeared in the legislature so frequently every year, that it become a public question. The day, the year, rather, that is, the month of the receipt of my letter, it had passed the House and it was in the Senate, and they were endeavoring—that is, the labor group—that is, the CIO and the American Federation of Labor was endeavoring to obtain the Democratic vote to pass it in the Senate. Upon examination I realized that to strip the Court of Chancery of that right and to permit the industries and business of our city to fall the victims that other industries and business has met with in other cities and other states, that it mean destruction to the workingman. That is, it would drive out from our city hundreds of industries that would cause the unemployment of thousands and thousands of our citizens. It was so drastic that I was fearful of permitting the Democratic party to assume the responsibility of the passage of this bill, and I wrote Senator Stout calling his attention to how drastic the bill was, and what it would mean of driving out of industry and what it would mean of crippling the court;

the only remedy that the business people and the industry had to protect their interests and to reguate the labor disputes. The vote of the Democrats defeated the bill. That's the story of the anti-injunction bill.

Q. Now, have you been heard as sufficiently as you wanted to be on direct examination?

A. Yes.

THE COURT: The City Clerk wants to talk to the Mayor about some municipal business.

MR. MATTHEWS: All right. May we have a five-minute adjournment? I am going out.

THE COURT: All right, we will take a ten-minute adjournment.

(Short recess.)

(After short recess.)

THE COURT: I will tell counsel, Dean Frazer and Mr. Ernst: Counsel for Jersey City, the Mayor, Mr. O'Mara, Mr. Matthews and Mr. Hershenstein have advised me that there is a very important tax hearing this afternoon which is of vital interest to the taxpayers of Jersey City, so that if it meets with your approval I will adjourn court.

MR. FRAZER: Well, might we ask then, if the Mayor can not go on, why could we not argue the subpœna issues this afternoon?

MR. MATTHEWS: I haven't any preparation to do it.

THE COURT: Well, let the Mayor go anyway. I understand it is advisable to let him go anyway.

MR. MATTHEWS: If your Honor please, I am not prepared to do it, and I think your Honor will allow—I have been on my feet here since ten o'clock this morning, and it isn't any desire to delay; if your Honor will hear it on Monday, I will be very, very glad to

do it. In fact, if Mr O'Mara can take it over now and do it.

THE COURT: He is right there.

MR. MATTHEWS: I mean if he has prepared on it. I don't know.

MR. O'MARA: No, I haven't prepared an argument.

MR. ERNST: You Honor please, the matter of the contempt argument was set down by you, I think, for last Tuesday.

MR. FRAZER: The subpœnas.

THE COURT: You said contempt, you mean subpœnas?

MR. ERNST: Pardon me, yes. As I understand it, the court set down for last Tuesday argument on the matter of the subpœnas. It seems to me if we are to adjourn now because we want to meet the Mayor's convenience and we will do that cheerfully, it does seem to me there can be no element of surprise; if the papers are not in court we might wait until they are sent over. I think we are entitled to the return courtesy of having this argument now.

MR. O'MARA: If your Honor please, may I say just a word on that issue as to the matter of surprise? Mr. Hershenstein and myself came to Mr. Matthews' office on last Monday afternoon for the purpose of preparing the argument on this motion on the subpœnas. At that time we were advised that Mr. Ernst had requested an adjournment of the motion. Therefore, instead of preparing the argument of the motion on the subpœnas we prepared by going over the record of the testimony which had been taken for further prosecution of the case. Then during the progress of the case, I think it was yesterday or perhaps it was the day before, when the question of the argument on the subpœnas came

up, your Honor set the matter over until Monday or Tuesday of next week.

THE COURT: Monday.

MR. O'MARA: Monday, was it, of next week, and so all our time in the meantime has been given to the preparation of the taking of the testimony in the case and we are not prepared.

THE COURT: I was wondering if we couldn't sort out among the subpœnas what they are going to involve, I mean what you are going to object to.

MR. ERNST: We are going to move to quash the subpœnas of Harry Ward, William Carney, Roger N. Baldwin and Morris Ernst. We are not representing the persons who have further subpœnas which may have been issued.

THE COURT: Those are the only four?

MR. ERNST: Those are the ones that we are concerned with.

THE COURT: Now, are you moving to quash the subpœnas entirely or just in part?

MR. ERNST: Moving to quash them entirely. It may be that the counsel for the defendants may be able to write some kind of a new subpœna.

THE COURT: The reason I said that I understood they were subpœnas duces tecum that you were interested in.

MR. ERNST: Yes; we are going to move to quash them in their entirety. The cases are clear on it. If Mr. O'Mara is really not prepared to argue I imagine we will have to extend to him the courtesy of putting it over. I take it, Mr. O'Mara, that you will go on with the motion on the subpœnas on Monday morning the first thing.

MR. O'MARA: If the Judge sets it down.

THE COURT: At 12 o'clock, because I have a couple of motions.

MR. MATTHEWS: Will the actual trial go on?

THE COURT: No, not until Tuesday.

MR. O'MARA: And what time does your Honor set it?

THE COURT: Twelve o'clock. Now, may I have the subpœnas over Sunday or copies of them?

MR. ERNST: Have you copies of the subpœnas?

MR. HERSHENSTEIN: Yes. Just give us the names.

MR. ERNST: William Carney, Roger Baldwin, Harry Ward, Morris Ernst, and I am not clear as to Arthur Garfield Hays. There was talk that he had been served, but I am not sure.

MR. ROONEY: He was served; he was served.

THE COURT: He was here personally the other day, I remember.

MR. ERNST: Yes. If he was served with a subpœna duces tecum, we will represent him.

MR. ROONEY: Do you represent Norman Thomas, too?

MR. ERNST: No, Mr. Morris Shapiro will appear as attorney for Norman Thomas.

MR. ROONEY: Do you represent the Editor of the *Daily Worker*?

MR. ERNST: We do not, we represent on one else in the matter. Those are your witnesses.

MR. HERSHENSTEIN: We will have those which you have just read off.

MR. ERNST: Will you get me copies, if I give these to the Judge?

THE COURT: I will return them to you on Monday.

MR. ERNST: Yes. I just thought we might want them.

THE COURT: Well, do you want them over Sunday?

MR. ERNST: I will give you my four subpœnas now.

THE COURT: Yes. Well, you are supplied with copies then.

MR. ERNST: I will get copies from you then.

MR. HERSHENSTEIN: Yes.

Mr. Ernst, when do you want these copies?

MR. ERNST: If you could get them in the mail tonight and in my office in the morning, it would be helpful.

MR. HERSHENSTEIN: We will send them to you.

THE COURT: Is that satisfactory?

MR. ERNST: Yes.

THE COURT: All right. We will have the argument beginning at twelve o'clock, and it will either be decided that day or the next morning by the court.

We will adjourn now until twelve o'clock on Monday.

MR. MATTHEWS: Your Honor has adjourned the case until then or——

THE COURT: No, the testimony will be resumed on Tuesday morning at ten-thirty.

(Thereupon an adjournment was taken to 10:30 a. m. June 21, 1938.)

Monday, June 21, 1938.

Case continued.

Appearances as before.

THE COURT: Before we proceed with the argument, I compared the subpœnas over Sunday, and it seems to involve at least what I thought was some duplication, in the documents called for. Did you trouble to sort that out?

MR. MATTHEWS: I think that is right, Judge Clark, as I examine them too, and I thought maybe the other counsel might have gotten in touch with our opponents to take care of the duplication end. We are perfectly willing, if there are duplications,——

THE COURT: For instance, you asked several of the four people in several cases,—I think every one of them was asked about the Garland Fund.

MR. MATTHEWS: Yes.

THE COURT: Or to produce the Garland Fund.

MR. ROONEY: That was to cover the proper officer responsible for those records, your Honor, to be sure we had the proper officer responsible for them.

THE COURT: Well, did you make a list of the documents you wanted, the actual documents? Then perhaps we could find out who has got them, if anybody has.

MR. MATTHEWS: Will your Honor tell me what your Honor thinks are duplications? Maybe they will be the same that I think are duplications?

THE COURT: Well, the Garland Fund——

MR. MATTHEWS: Let me get that right now, Judge, and I will follow you.

MR. ERNST: Have you got copies of those?

MR. HERSHENSTEIN: I have just got this. You can use ours.

MR. ERNST: Oh, all right.

MR. HERSHENSTEIN: You can use ours.

MR. MATTHEWS: Which would be the one to produce the Garland Fund?

MR. ROONEY: Mr. Ernst, treasurer.

THE COURT: Let me read what I have got.

MR. MATTHEWS: Yes, your Honor.

THE COURT: I have made a sort of a tabulation of it. I have the Garland Fund, the American Civil Liberties Union——

MR. MATTHEWS: Yes.

THE COURT: Follow this closely, if you will. The Communist Young Workers League, the Political Prisoners—I don't know what that exactly was; I couldn't tell what that was from the subpœna.

MR. MATTHEWS: The International Committee on this subpœna for Political Prisoners——

THE COURT: That is the one.

MR. MATTHEWS: That is Mr. Garfield Hays.

THE COURT: The International Labor Defense, The Industrial Workers of the World, The New Masses, The Vanguard Press, the Federated Press——

MR. MATTHEWS: I haven't got that. Is that in Garfield Hays' subpœna?

THE COURT: No—these are from all of them.

MR. MATTHEWS: Oh, yes. I follow that.

THE COURT: I haven't got Mr. Hays'. Was he given a subpœna?

MR. MATTHEWS: No, apparently——

MR. ROONEY: Yes.

MR. MATTHEWS: Apparently, your Honor——

THE COURT: I haven't got that. I have four; one for Mr. Ernst, one for Mr. Carney, one for Mr. Baldwin, one to Dr. Ward. I have no fifth. Is there a fifth?

MR. ERNST: I had said, your Honor, that there was a fifth, that I didn't have it with me, but I was also representing Mr. Hays on it.

THE COURT: Have you got a copy?

MR. ERNST: I haven't got copies of any of them.

THE COURT: Well, has anyone got a copy?

MR. MATTHEWS: Is it all right to take it out?

MR. ROONEY: Yes.

MR. MATTHEWS: Here is one, Spaulding.

MR. ERNST: Which is this?

MR. MATTHEWS: Garfield Hays.

THE COURT: Have you got it? I want it.

MR. ROONEY: Give that to the Court. Mr. Ernst has it.

MR. MATTHEWS: I just gave it to Mr. Ernst.

THE COURT: Oh, I beg your pardon.

MR. ERNST: The Judge wants it.

THE COURT: No, no, I will let you look at it first.

MR. ERNST: I have seen it. (Handing to the Court.)

THE COURT: Now, there is nothing new on that one. I will go on: The Vanguard Press, the Federated Press, The Daily Worker, the CIO Affiliates. Now, those are all that I got off all the subpœnas. Is that all inclusive?

MR. MATTHEWS: Yes, your Honor, as I followed you, I think it is.

THE COURT: All right.

MR. ROONEY: And there is one for the reception of Soviet fliers. That was one I think you didn't mention, your Honor.

THE COURT: Oh, yes, I left that one out. This seemed a little limited; a study of obscenity and censure —the New Masses.

MR. MATTHEWS: That to my mind doesn't refer to any notes that an author may have.

THE COURT: What? The Soviet fliers—do you want me to add that?

MR. MATTHEWS: I don't know. Is that to be added?

MR. ROONEY: Yes.

MR. ERNST: Soviet fliers?

MR. MATTHEWS: I think that is what it is.

THE COURT: I thought it was a reception committee to the Soviet fliers.

MR. ROONEY: To the Soviet fliers.

THE COURT: All right. Now, before we even go to a consideration of them, I think we should first find out if any of the persons to whom the subpœnas are addressed have got any of the papers that they require. For instance, I never heard of the Federated Press, without saying that invidiously; I just never heard of it. I have heard of the Vanguard Press and——

MR. MATTHEWS: There is a long article on the Federated Press in the Fish Report, Judge Clark. May I remain seated?

THE COURT: I just simply say I never heard of it. That doesn't mean that it isn't well known. I have heard of the Vanguard Press, and I would suppose that the books, papers and records of the Vanguard Press are in the possession of whoever is the Vanguard Press, not of Mr. Ernst.

MR. ERNST: Your Honor, would you care to hear me on my general argument in regard to the subpœnas?

THE COURT: Well—of course I am going to hear you, Mr. Ernst, naturally, but I thought it seemed as a practical matter better to sort out the papers and see who has got them, if anybody.

MR. MATTHEWS: Do you want the Vanguard Press?

MR. ROONEY: Yes.

THE COURT: Well, your subpœna, Mr. Rooney, says all books, papers and records of the Vanguard Press. Why, the Vanguard Press, as a matter of common knowledge, is a large publishing house.

MR. MATTHEWS: I don't know where it is.

MR. ROONEY: I think that your Honor stated the salient situation there originally when you asked Mr. Ernst whether or not he had these records. I think Mr. Ernst does through that fund of which he is the treasurer.

THE COURT: Has the records of the Vanguard Press? You might just as well ask him if he has the records of Scribners, or Harpers, or Doubleday Doran. You don't think he has them, do you?

MR. ERNST: May I address your Honor on that point a moment? I happened to be counsel for Double-

day Doran and the Vanguard Press at times, and I have not represented the Vanguard Press for some years. I have been instrumental in having them publish the lives of the various judges of the Supreme Court and the dissenting opinions of Judges Holmes and Brandeis. That is the reason I knew who they were, because I happened to have those two books, and they have got Vanguard Press written on the bottom of them.

I was one of the large group of people that saw to it that that house was originally organized.

THE COURT: See if Justice Holmes' dissenting opinion isn't in my office. I think it is.

MR. MATTHEWS: I have that.

MR. ERNST: My point, your Honor, if you wish to hear me sooner or later is—my objection goes way beyond whether this material is in the possession of anybody——

THE COURT: Well, let's drop out of the subpœnas all that is improperly there on more technical grounds. Now do you suggest that w bring in the books, papers and the records of the Vanguard Press through Mr. Ernst, who has nothing to do with them?

MR. ROONEY: Mr. Ernst answered that he is one of the organizers of the Vanguard Press.

THE COURT: You don't seriously contend, Mr. Rooney, that a person acting in his legal capacity, organizing a corporation, is in possession of the records, do you?

MR. ROONEY: I will leave that to Mr. Matthews.

MR. MATTHEWS: I didn't draw the subpœnas, I only just learned—but I will take it on my own responsibility——

THE COURT: I gathered from Mr. Rooney that he did.

MR. MATTHEWS: Yes, sir. I will take it on my own responsibility that the Vanguard Press be removed from the subpœna and that the notes for a book be out of the subpœna.

THE COURT: How about the Federated Press?

MR. MATTHEWS: The Federated Press is mentioned in the Fish report. Now, I don't know whether Mr. Ernst is the person who has anything to do with it.

THE COURT: Have you the page in the Fish report where it is mentioned?

MR. MATTHEWS: I left my papers in the office. There isn't any question about the Federated Press, that Mr. Ernst cannot produce records from a concern he has nothing to do with.

THE COURT: Who is the man from the Federated Press?

MR. ROONEY: The Federated Press, sir, was sponsored by this Garland Fund.

MR. MATTHEWS: They made large contributions to it, as I remember it, according to the record—I will stand corrected if I am wrong, and it was a matter of much investigation at the time, but nevertheless I conceive the subpœna should be directed to the man who has charge of those records and if Mr. Ernst has not, then it cannot be directed to him.

THE COURT: Then the Federated Press is out as far as the subpœna is concerned.

MR. MATTHEWS: I wouldn't say it is out, I wouldn't want to take the responsibility, but that is my view of it now.

THE COURT: Can you advise us who the officers of the Federated Press are?

MR. MATTHEWS: Maybe Mr. Ernst can enlighten us.

MR. ERNST: I don't know in the first place and in the second place I wouldn't enlighten them. I do know a lot about the Federated Press. One of the witnesses here I think testified that the *Jersey Journal* or one of the Newark papers was subscriber to it.

THE COURT: No, that is the General Press, a press association that also, in my ignorance, I had never heard about.

MR. MATTHEWS: I made that mistake when I read the subpœna.

THE COURT: Anyway, you will have to find out who the officers of the Federated Press are.

MR. MATTHEWS: Suppose we hold that in abeyance.

THE COURT: The Vanguard Press is out, notes for a book is out, Federated Press is out as far as Mr. Ernst is concerned. Now, I should say that that also applied to the New Masses. That, as I understand it, is a publication of its own.

MR. MATTHEWS: No, I wouldn't say that because the ownership of the New Masses was laid in the lap of the Garland Fund or the American Fund for Public Service.

THE COURT: Correct, I mean it was laid in the lap but we cannot disregard the corporate fiction, can we?

MR. MATTHEWS: No, but you have the directorate there, some several people who are defendants in this case.

THE COURT: Mr. Ernst I understood was not a director of the New Masses, was he?

MR. MATTHEWS: No, no, as I recall——

THE COURT: Then we will put that in the same category as the Federated Press.

MR. MATTHEWS: No, no, please, your Honor, let us not do it in that fashion. If the New Masses is owned by the Garland Fund, then the records of the New Masses are mightily relevant and pertinent.

THE COURT: I didn't pass on that; I just said you had the wrong person subpœnaed.

MR. ROONEY: No, I don't think so because if the ownership is in the Garland Fund and the treasurer is subpœnaed to bring them, who else would be more fit?

THE COURT: I will tell you who else would be more fit, the president of the New Masses, whoever he may be.

MR. ROONEY: No, the treasurer would be just as fit.

MR. ERNST: The treasurer would be more fit, I should think.

THE COURT: Who is not Mr. Ernst.

MR. ROONEY: The treasurer of the Garland Fund who owns the New Masses.

THE COURT: I will not disregard the corporate fiction for the purposes of the subpœna, I don't think it is good law.

MR. ERNST: May I suggest, your Honor, that you might predicate your position on a sounder ground. Counsel for Frank Hague says that the Garland Fund owns the New Masses. It is not the fact and the truth, and anybody who so told him that lied to him and probably they got it from the "Red Network."

MR. ROONEY: Do you deny that in 1932——

MR. ERNST: I am not going to be examined by you, sir.

MR. ROONEY: Now, please. You just made a statement to the Court. Are you speaking as of 1932 or of the present? I think in fairness to the Court you should enlighten the Court.

THE COURT: If they don't own the New Masses then even disregarding the corporate fiction it would have no effect.

MR. MATTHEWS: The statement of Mr. Ernst on the record is that the Garland Fund does not own the New Masses and that he is not the treasurer of the New Masses, and therefore on that statement, which your Honor takes from him as an officer of the court and which I do, he cannot be asked to produce it.

THE COURT: I mean, Mr. Matthews, if you dispute any of these statements——

MR. MATTHEWS: I don't dispute them, your Honor. He is an officer of the court, he is making a statement to the Court.

THE COURT: All right. Now, that is the New Masses. How about the Daily Worker? That was on the subpœna of Mr. Ernst only.

MR. ERNST: Your Honor please, I would like to make a statement on that. I have never been in any way directly or indirectly connected with the Daily Worker except in two capacities; one is that about every two weeks they call me vituperative names because I preach against Communism, and in the other instance I had a relation with the Daily Worker because I was consulted by them as counsel when they were being outrageously ridden by public authorities and denied the rights of free press and those, sir, have been my only connections with the Daily Worker.

MR. MATTHEWS: Except you made out the checks for the Garland Fund which were given to the Daily Worker; that is a connection and that is why we want that.

THE COURT: Well, I am not passing on that now, Mr. Matthews. I am saying we have got to subpœna the people who have got the document before we can act. So the Daily Worker is out.

MR. MATTHEWS: The Daily Worker, your Honor means Mr. Ernst cannot produce those.

THE COURT: Only upon his subpœna as I went over it last night does that publication appear.

MR. MATTHEWS: Of course, the statement of Mr. Ernst that they call him vituperative names, etc., that would be interesting, whether it was before or after they contributed to the New Masses.

MR. ERNST: May I say at all times in the history of the Daily Worker from the time it started they have never ceased for any length of time riding me, ridiculing me, and castigating me in their columns because I am a believer in free speech and a free press, which is repugnant to the thesis of Communism.

MR. MATTHEWS: But if I am informed correctly, sir, you wanted to distribute that Daily Masses in Jersey City.

THE COURT: Don't mix them up and say Daily Masses and New Worker.

MR. ERNST: Your information is entirely incorrect.

THE COURT: It is *Daily Worker* and *New Masses*, not Daily Masses and New Worker.

MR. MATTHEWS: Well, I might be forgiven for mixing the names, but the proposition that interests me is that they should contribute all these thousands to a magazine that is castigating them.

THE COURT: Well, anyway, they have to be subpœnaed from someone else. Now, the Industrial Workers of the World, is that a corporation?

MR. MATTHEWS: You will have to ask the subpœna drafter; I don't know.

THE COURT: No, no, you came into the case after these subpœnas were made out. Don't think I am harassing you. Will someone answer that?

MR. ROONEY: I do not know, sir. The basis of that subpœna, of the subpœna addressed to Mr. Ernst, so that we understand each other, was because of the large contributions that were made by the Fund controlled by Mr. Ernst and his associates, the Garland Fund, to these various enterprises.

MR. ERNST: Your Honor please——

THE COURT: My recollection of that book you had was that there wasn't anything about the Industrial Workers of the World.

MR. ERNST: I can enlighten you on that. The I. W. W. was an active organization around the time of the last war.

THE COURT: We all remember that, commonly known as the Wobbles.

MR. ERNST: As far as I am informed, I have not heard of it during the past probably ten years; I have never been a member, I have never been a contributor.

THE COURT: Where is that book, Mr. Jaeckel?

MR. ERNST: May I add one thing? I have volunteered my services and I have voted moneys in support of members of the I. W. W. when they were being deported out of cities in the United States and when they were not being given a fair trial, as I thought they were entitled to a fair trial under the Constitution of the United States, and to have nothing missing in the record may I here say that if an I. W. W. comes to me and I think he has been deprived of his constitutional rights I will defend him

to the limit of my time and my finances without compensation, as I have in other cases.

THE COURT: Well, I didn't know there were any still left.

MR. ERNST: I think they are stil in existence, your Honor, but this fishing expedition thing of writing out names which must have come from a book which has been thoroughly repudiated, because obviously some clerk has copied lists of names of organizations from a book which lists the dangerous radicals of America and among them, of course, you will find Eleanor Roosevelt and others of her group——

MR. MATTHEWS: I think Mrs. Roosevelt should be spared that reference, and if it is a reference to her having been abused I join in condemning it, but if it is to lug her in for newspaper purposes, I think she should be left out.

THE COURT: Oh, I think so. There is a book called the Red Network.

MR. MATTHEWS: I don't know of it, your Honor.

THE COURT: Well, Mr. Rooney, will you tell us how anyone could produce the papers of the I. W. W., an unincorporated organization, so far as appears at least, without any present or current existence.

MR. ROONEY: Sir, if you supply the money——

THE COURT: That isn't the question I asked you, Mr. Rooney. I asked you how, and the only question we are now currently considering is how anyone can produce their records.

MR. ROONEY: There is no proof before the Court that that organization is out of existence, sir.

THE COURT: Well, will you supply the proof as to who the officers are? Mr. Ernst is not one of them and the subpœna is addressed to him.

MR. ROONEY: If Mr. Ernst states that he cannot produce those records, that, as far as I see it, is the end of it in so far as he is concerned, but it seems to me that this organization which is contributing funds must have some record of the organizations to which they contribute.

THE COURT: Well, I suppose, Mr. Rooney, I don't suppose it is relevant, but you and I contribute funds to certain charities and we don't have their records.

MR. ROONEY: Well, apparently Mr. Ernst says he has nothing to do with them.

THE COURT: That's out. I am going backwards on my list. The International Labor Defense, as I understood it, was an organization with numerous officers, in fact the public papers reported that a former Congressman, I forget his name, Marcantonio, something like that, was the president; is that right?

MR. ROONEY: That's right, he is the present president of it.

THE COURT: I think the subpœna should be addressed to him.

MR. MATTHEWS: Marcantonio, a Congressman from New York.

THE COURT: A former Congressman.

MR. ROONEY: But your Honor, isn't this ruling all predicated on the assumption that none of the records are in the control of Mr. Ernst?

THE COURT: I will ask him. I should assume they were in the control of their proper officers, I don't know.

MR. ERNST: Your Honor please, I would like to say a word about the whole form of this subpœna. It seems to me that under the cases, and I will give you

the citations, they are void in toto, in the first place being too general and what old Judge Holmes originally described as a fishing expedition; in the second place there is no statement indicating which of the records would be in any way material; and in the third place I fail to find a single defense interposed by the defendants to which any of this material can go. Now, if your Honor would bear with me a moment——

MR. MATTHEWS: May I interrupt you a minute?

MR. ERNST: No, if you will let me finish on the argument.

MR. MATTHEWS: Well, it will save you arguing.

MR. ERNST: No, may I just finish, please? Assume for the sake of argument that I am the head of the I. W. W., which I never belonged to; assume I have all their records; assume I financed the organization in toto; is that a defense to our claim of deportation? Is it a possible defense to what we claim are illegal searches and seizures? Is it a possible defense to interference with organizational activities? Is it a possible defense what is in a person's mind without overt act, to the denial of free speech? It seems to me that is the fundamental issue, your Honor, in the situation. How could it possibly be held in these United States under a democracy that what is in a man's mind in respect of I. W. W. or anarchy or any of these things can possibly be interposed as a defense?

THE COURT: Well, without expressing any present opinion about it, Mr. Ernst, the only relevancy I would say that the evidence called for by the subpœna might have to the issue would be first the question of whether the state of mind of the populace of Jersey City has been correctly represented with respect to the public meetings, and then secondly whether, if it could be shown that some of these organizations advocated the

overthrow of the Government by violence, whether that would have any bearing on the equitable position of the plaintiffs. You understand that in saying that I express absolutely no opinion on it, first whether it could be proved, and secondly, whether in the last analysis that legal position is sound.

MR. ERNST: If your Honor please, I think we do not clarify the issue to the American public by such an explanation, much as it would be valuable to a senatorial commission. I do not see how the state of mind of the people of Jersey City can be deemed to be a factor in the legal determination. We have had testimony from Mr. Casey of what he thought the state of mind was. Whether or not he properly interpreted that state of mind or not and sized it up and appraised it properly it seems to me is not the issue; and, moreover, as to the denial of the specific permits, the testimony, as I recall it, is that Mr. Casey made no inquiries, that he was not concerned with the backgrounds of the speakers and their connections. He relied on a very different theory, and that is he relied on a theory that there might be a disturbance. Now whether or not the people of Jersey City thought there was a disturbance because of the Red Network or some literature that was handed out, such as was introduced here, or whether they found their state of mind disturbed for any reason, it seems to me it is entirely immaterial, unless we, as a matter of law, in America, are going to take the position that whenever the Mayor of a city, or a Superintendent of Public Works, believes that the community has a disturbed state of mind, he has the right to deny people these basic rights under the bill of rights.

THE COURT: No, I don't think I quite said that. I said whether the people had it. I don't think his belief, perhaps, may be so material, unless it is a reasonable belief.

MR. ERNST: Do I understand your point is that this might be material to prove that the people in Jersey City had a state of mind?

THE COURT: Might be, I said.

MR. ERNST: What?

THE COURT: Might be, I said.

MR. ERNST: Might be; assuming that this material was available to them, number one; and it seems to me if you work on the theory of the state of mind, it makes no difference whether the people of Jersey City had a valid basis for a state of mind or an invalid one, because the Chief of Police on his theory, and the Mayor, if they find things objectionable to the people of the city, clamp down on free speech and the bill of rights—

THE COURT: Well——

MR. ERNST: Now, whether the people of the city had some facts before them or some rumors, maybe they were as misinformed as to the relationships as the people who wrote the subpœnas were.

THE COURT: I won't say that I have made up my own mind about it, because I haven't, and it may be it wouldn't even be proper for me to have made up my mind; but as far as public meetings are concerned, it might be the law, or it should be the law, rather, that if the persons who live in the city object to the views, and really object, I mean without fomentation or anything of that character, from what the speakers either have in the past expressed or say that they are about to express, the authorities need not permit those views to be expressed on the public streets or the public parks. That might be the law. I don't want to say now whether it is or not; I mean the law in the last analysis.

MR. ERNST: Now, on that, your Honor, the only evidence that would seem to me to be material would

be whether the particular speakers who applied for permits had ever made speeches that caused a disturbance, or had ever preached the overthrow of the government by force and violence. I am not conceding for a moment the legal position——

THE COURT: Oh, no.

MR. ERNST: ——that a man who had so preached is banned, because I will stand by Judge Holmes on that position; but the testimony is that they never looked into the fact as to whether there had ever been a disturbance from their speaking. Plus that I add this fact, that there is no defense that has been pleaded, and I do not intend to plead surprise, not by a long shot, but I ask the counsel for the defendants to show me the defense in their pleading which might be construed to mean that if the head of the I. W. W. came in here tomorrow, thereby he could be deported, searched unreasonably, not allowed to picket peacefully, and be denied in advance of disturbance the right to speak in halls or public places. Show me the part of the pleading under which any of this can come in.

MR. MATTHEWS: I have advised the counsel who drew the papers that the pleadings should be amended to add affirmative defenses in that respect.

MR. HAMILL: If your Honor please, Judge Glavin who is not here today, drew those pleadings from such information as he had at the time, and they do not cover all of the defenses in their full scope which we wish to present; and in order to enable us to put in those defenses, we shall ask for an amendment of the answer to that extent.

THE COURT: Well, it seems to me you ought to submit the amendment to your opponents and give them notice.

MR. ERNST: If your Honor please, we don't want to delay the trial at all. As soon as it is submitted, we

are not going to plead surprise. May we merely, to save time, Mr. Hamill having indicated that some of these defenses are going to be interposed, ask that the particular things, because we are bound to raise it, be given on this point. What are the defenses which were within the knowledge of Frank Hague and his associates at the time of the denials? In other words, if they denied the Congressmen and other people the right to speak, the defenses then should have been in existence in their minds. And I say to you, with all honesty, as I read the record, none of the plaintiffs can honestly sign those amended defenses.

MR. MATTHEWS: I object——

MR. ERNST: At this time.

MR. MATTHEWS: I object to those statements.

MR. ERNST: That is an argument. You can't object to statements. You can argue against them.

MR. MATTHEWS: Statements are not argument.

MR. ERNST: You can argue against them.

MR. MATTHEWS: I object to that statement because it is made by this gentleman. The fact is that I, as the trial counsel, come into the possession of pleadings that, when I examine from the standpoint of defenses, do not sati y me. I suggest in all fairness that they be amended to cover that situation. But these documents would be admissible if there were no affirmative defenses. These documents would be admissible under the denial in the pleadings. But in order that your Honor might have a scope for the defense, I suggested to them only this morning, in fact they were being written up in my office in long hand, a proposed amendment. Now, I submit that the statement here that none of these records of the Garland Fund, or the Civil Liberties Union, are relevant to this issue——

THE COURT: Well, we haven't got to that yet, Mr. Matthews.

MR. MATTHEWS: Well, he is arguing on the general admissibility of anything that has been asked for.

THE COURT: We now struck out—I understood that, but I was proceeding slowly to strike out the requests for all the funds up to—I had reached the Political Prisoners, whatever that is. Here it is; International Committee for Political Prisoners. I was going to insist on continuing along those lines temporarily. What is the International Committee for Political Prisoners? This is a subpœna addressed to Mr. Ernst.

MR. MATTHEWS: Well, when a man hasn't the records, he can't produce them, of course.

THE COURT: Oh, no, but I thought maybe we could help get them if anybody knew what they were. I never heard of this.

MR. MATTHEWS: I have told them already to get the man that has them. If Mr. Ernst says he hasn't them, that is out.

THE COURT: Have you got those, Mr. Ernst?

MR. ERNST: I haven't got those, your Honor, but it seems to me that this is not the proper way to draw up a good subpœna for the defendants, to draw them up on a fishing expedition and then ask, "Have you got them?" I rather think that is something less than decent, to subpœna from a member of the bar, without full inquiry, records that you must have known he didn't have—probably to create an inference that he had them. And I resent that kind of practice, as a member of the bar.

THE COURT: If the inference is incorrect,——

MR. MATTHEWS: If Mr. Rooney, in drawing the subpœna, drew that conclusion, he probably drew it from your affiliation with organizations which you admit, sir.

MR. ERNST: He could have made an inquiry.

MR. ROONEY: If your Honor please——

MR. ERNST: Is Mr. Rooney a member of the bar?

THE COURT: Yes, he is.

MR. ERNST: Is his appearance recorded here?

THE COURT: No, it isn't.

MR. ERNST: I would like to have it recorded.

MR. ROONEY: I have been a member of the bar for 20 years.

MR. ERNST: I mean in this case.

MR. ROONEY: You asked if I am a member of the bar. I have been a member of the bar for 20 years.

MR. ERNST: I ask that his name be included as of counsel in this case.

THE COURT: All right.

MR. ERNST: Can that be done, your Honor?

THE COURT: Yes, certainly.

MR. ROONEY: Now, if your Honor please, in connection with this statement of Mr. Ernst, it seems rather a strange procedure that these matters should be argued orally without formal motion papers before the Court.

THE COURT: Well, I don't know whether you were here, Mr. Rooney, the other day, but we went into that in some detail.

MR. ERNST: They made the motion——

THE COURT: It was agreed that this was the form that the motion would take. It was agreed.

MR. ERNST: They made the motion, and we ask to quash.

THE COURT: Yes.

MR. ERNST: These subpœnas are a motion under the Fourth Amendment to the Constitution. That is what they really are.

MR. ROONEY: Now, if your Honor please, we issued those subpœnas through the clerk of this Court. Counsel has a perfect right to issue a subpœna duces tecum. The method of procedure, as I understand it, and I think your Honor will bear me out, is that they must object to the method of procedure.

THE COURT: They make the ordinary motion.

MR. ROONEY: They must do so by some formal motion.

THE COURT: They made it on the record, Mr. Rooney, several days ago.

MR. MATTHEWS: We consented to argue it, Mr. Rooney.

MR. ROONEY: All right.

THE COURT: Now, the International Fund or Committee for Political Prisoners, that's out. Now, Communist Young Workers League; what's that?

MR. ROONEY: All of these leagues, sir, are organizations which were contributed to by Mr. Ernst and of which he and his associates are members of the Board of Directors.

THE COURT: Mr. Ernst, are you a director of the Communist Young Workers League?

MR. ERNST: Am I what, sir?

THE COURT: A director or a member?

MR. ERNST: By no means.

THE COURT: It is incorporated?

MR. ROONEY: He or his associates, it asks.

THE COURT: Well, you can't address a subpœna, Mr. Rooney, I need hardly tell you, to a person and say because your associates are connected with it, you must produce the document.

MR. ROONEY: I understand Mr. Ernst states he has none of those records.

THE COURT: Yes, so I understand. Now, that leaves the American Civil Liberties Union; I think the subpœna of Dr. Ward is the appropriate place for that, isn't it? Isn't he the president of it?

MR. ROONEY: He is the president of it but we want to obviate the necessity of having Dr. Ward walk into Court on the return day and say he doesn't have the records.

MR. MATTHEWS: I think Dr. Ward said he promised to bring the records, didn't he?

MR. ERNST: If your Honor please, if the Court finds that the records on a properly served subpœna should be produced, and does not quash the entire subpœna, the Civil Liberties Union will produce every inch of its records. No question about that.

MR. MATTHEWS: That's that.

MR. ERNST: But I want to argue—no, that isn't that yet; what we want to argue is whether there shall be even that subpœna duces tecum. That is the important thing to argue.

MR. MATTHEWS: In other words, you can have them but you can't.

MR. ERNST: Oh, no, I am just saying that we are in a position to produce and will if the Court sustains this kind of a subpœna for this purpose.

MR. MATTHEWS: There isn't any question Judge Clark will order those records produced, I think.

THE COURT: And then, the Garland Fund. Now, you will have to state what you mean by the records, Mr. Rooney. What do you mean by the records? What records do you want from the two remaining organizations on Mr. Ernst's subpœna? I am leaving out the CIO, because that more properly should be put under Mr. Carney's subpœna.

MR. MATTHEWS: That's Carney's subpœna.

THE COURT: Yes.

MR. ROONEY: Do I understand then that your Honor has ruled on that or is your Honor asking me a question about it?

MR. MATTHEWS: He asked you as to the records.

THE COURT: I asked you a question about it.

MR. ROONEY: As to the records of the Garland Fund, of course we want their records. Mr. Ernst is the treasurer of the Garland Fund and was at the inception of it, and, incidentally, was one of the organizers of it.

MR. ERNST: Which is not true, your Honor.

MR. ROONEY: That is true, and you know it.

MR. ERNST: It is not true.

THE COURT: Well, don't pass the lie, please.

MR. ERNST: It just isn't true. I was added to the Board later.

MR. MATTHEWS: Well, what is sauce for one is sauce for the other.

THE COURT: I should imagine Mr. Ernst must know what he organized.

MR. ROONEY: Well, apparently he doesn't, because he issued statements right after the organization of it, which we can prove.

THE COURT: Well that doesn't mean anything.

MR. ERNST: Newspaper statements.

MR. ROONEY: Now, if your Honor please, in connection with that, we are entitled to know what these amounts were, received by that organization, the Garland Fund, which after all, as was charged on the witness stand in this case, is the heart of these proceedings, the source from which they were received, the dates they were received and the amounts disbursed by them, the places to which they were disbursed, and the dates on which they were disbursed.

THE COURT: I thought you had all that in that little library book we had the other day.

MR. MATTHEWS: No, you haven't got the dates yet. You have just got the fact.

THE COURT: You have taken the book away. Otherwise I would be better informed as to that.

MR. MATTHEWS: You may have it. I will see that it is sent to your office this afternoon.

THE COURT: Oh, no. But I say—you were going to have it photostated, Mr. Matthews, weren't you?

MR. MATTHEWS: Not that.

MR. ERNST: If your Honor please, the Garland Fund reports have been printed and distributed, I think, in several thousand copies, either every six months, year or year and half, and you will probably find them in every sizable library in the United States, printed.

THE COURT: Printed?

MR. ERNST: Showing amounts, contributions, including the Sacco-Vanzetti case support, the Scopes case, Workers' Education and other objectives.

THE COURT: Does it show the receipts?

MR. ERNST: Oh, it shows everything.

THE COURT: The source of the receipts?

MR. ROONEY: Now, if your Honor please, so I may get myself straight, may I ask Mr. Ernst through the Court as to whether or not he or his firm incorporated the American Fund for Public Service?

THE COURT: That is the Garland Fund.

MR. ERNST: I don't hesitate to say that our office incorporated that organization.

MR. ROONEY: And were you the gentleman who directed the preparation of the papers?

MR. ERNST: What papers are you talking about?

MR. ROONEY: The certificate of incorporation.

MR. ERNST: I don't recall that, but I will assume full responsibility.

MR. ROONEY: And were you the first treasurer of the organization?

MR. ERNST: I don't know. I know I was not on the initial board; but I have been a proud member of that organization which in my opinion did more to put through the Child Labor Amendment than anything in the United States except one organization.

MR. MATTHEWS: Well, we can't help his pride, because at times Satan uses good purposes and gets an end in order that the ultimate may be destroyed.

THE COURT: Well now isn't it a fact that there are official reports of the Garland Fund already in evidence?

MR. ROONEY: How can there possibly be any objection from the treasurer of this organization to producing the reports?

THE COURT: I don't even know that there is any objection yet. I haven't even asked that.

MR. ERNST: There is, sir, a very real objection, if your Honor will hear me on the basis of the objection.

THE COURT: Yes, sir.

MR. ERNST: Not only to the Garland Fund but all this stuff. My objection is this, that those subpœnas were issued as a fishing expedition, and the admission is now made in Court that a good bit of the material should not have been subpœnaed from the people to whom the subpœnas were directed.

THE COURT: Well, we are down now to two. There are only two left.

MR. ERNST: That's right; but it shows this, your Honor: it shows that there was not placed before this Court as a basis for the issuance of subpœnas any facts indicating what material in there was material, how it could be material, and under what defense or part of the pleading it could be material; and I recognize, as Mr. Matthews has stated, that they intend to amend their pleadings, but nevertheless I ask that any one of the array of counsel for the defendants point to a single clause in their present pleadings, and the subpœnas were issued under the present pleadings, a single clause that would permit this material to come into court.

MR. MATTHEWS: The denial——

MR. ERNST: For example—just let me finish.

MR. MATTHEWS: No, you have asked for a point or two.

MR. ERNST: Will you kindly let me finish?

MR. MATTHEWS: The denial of the allegations of the petition is sufficient to predicate the subpœnas on. Let the record show that.

MR. ERNST: If your Honor please, may I say this? We just get no where if we all talk at once. May I say this, your Honor? We have issued two subpœnas in this case. We issued a subpœna in relation to the material for permits. We were specific. It related to the pleadings and was well within the provisions of the Hinkle case, as to subpœnas being definite, not vague, and being material. This, your Honor, is as if we subpœnaed from Frank Hague all of his correspondence with, may I say, the bookies——

MR. MATTHEWS: I object to that statement.

MR. ERNST: All——

MR. MATTHEWS: Just a minute. I object to that statement.

MR. ERNST: I am going to say——

MR. MATTHEWS: Just a minute. I ask your Honor not to sit there and hear that slander of the Mayor of a city comtemptively hurled at the court in this case, in a cowardly manner, because he knows he is not responsible for damages in a suit for slander for it. That's a cowardly, contemptive statement against the Mayor.

THE COURT: I thought the counsel was responsible in court.

MR. MATTHEWS: I don't think so, under the law. That's cowardly and contemptible.

MR. ERNST: I am responsible, your Honor.

MR. MATTHEWS: That is cowardly and contemptible, to do that.

THE COURT: Mr. Matthews, I thought the Judge was the only person who could plead absolute privilege.

MR. MATTHEWS: Judge Clark, let us not lose sight of the fact——

THE COURT: There is some doubt even about that, isn't there?

MR. MATTHEWS: Let us not lost sight of the fact that this man has just into your ears called the Mayor one who has charge of the bookies in Jersey City. That's cowardly.

MR. ERNST: If your Honor please, I will give you another example. What if we subpœnaed tomorrow all of the correspondence between Casey and the Mayor in respect to this entire subject, plus their bank accounts? Because there we are right with a foot in the door, because the Mayor said he contributed; and we could come here and say we want his entire bank accounts, because we want to find out whether when he said a few hundred dollars, that's all. Now, obviously, that would be an abuse of the subpœna power, and we have something to pin it on. And so I come back to this——

THE COURT: Well, now, I want to interrupt again, just for one point, so that the argument is clear. There are two other organizations of Mr. Baldwin's subpœna that haven't appeared on the others: The League for Industrial Democracy—what is that?

MR. MATTHEWS: If there are any organizations, Judge Clark, might I not have——

THE COURT: I just wanted to know what it was.

MR. MATTHEWS: Might I not have the courtesy of the court to this extent: if there are any records that this officer of the court says he has control of——

THE COURT: Mr. Baldwin isn't here.

MR. MATTHEWS: Oh, Baldwin?

THE COURT: Baldwin. I am finished with Mr. Ernst, as far as he actually has any records. Now, I am just skipping over to the next one, because I have made this table of various——

MR. MATTHEWS: The defendants would like to think, your Honor, that your Honor will co-operate with us to get that information which is relevant to defend this case, and we have a firm trust that you will, without further speeches and abuse of a man in his absence,——

THE COURT: What is the League for Industrial Democracy?

MR. MATTHEWS: I don't know.

THE COURT: Do you know?

MR. MATTHEWS: I didn't issue the subpœna.

THE COURT: No, I am asking Mr. Rooney.

MR. ROONEY: The League for Industrial Democracy is a league which was formed and is controlled by Mr. Ernst or his associates.

THE COURT: Well, who is the president of it? You have made that assertion.

MR. ROONEY: Norman Thomas; Norman Thomas.

THE COURT: All right. Then that subpœna should go to him.

MR. ERNST: Your Honor, I would just like——

THE COURT: Is he the president?

MR. ERNST: I don't know. I don't believe he is. But just let me make this clear; this accusation that Mr. Ernst controls the League, I would like this member of the bar to put into an affidavit, the source of that information, on which he can get the warrant, get the

subpœna. That's what I resent; that they won't give you facts——

MR. MATTHEWS: May we stop——

MR. ERNST: There is nothing to it.

MR. MATTHEWS: This gentleman from New York! No affidavit from him as he slanders the Mayor of the city, none whatsoever; but affidavits from a lawyer when he makes a statement upon information and belief!

THE COURT: All right. Mr. Thomas is the president.

MR. ERNST: I would like to know the source of his information, under the cases.

MR. ROONEY: I will tell you.

THE COURT: Just a minute. Norman Thomas is president of the League for Industrial Democracy. Now, the Communist Party—what do you mean by that? The Communist Party nationally, or as a state or what?

MR. ROONEY: Nationally.

THE COURT: Nationally?

MR. ROONEY: Yes, sir.

THE COURT: Well, would it be proper to say that generally speaking everyone knows that the candidate for President on the Communist Ticket was one Browder.

MR. ROONEY: I appreciate that, sir.

THE COURT: I don't know this organization. I don't know how you would subpœna their records. I don't know who are the heads of it. If you subpœnaed the Republican Party records, let us say, you would naturally subpœna John D. M. Hamilton, I suppose.

MR. MATTHEWS: Or the Honorable Jim Farley.

THE COURT: I mean, Mr. Rooney, I don't know. I am not trying to be humorous.

MR. ROONEY: No, but the only thing we are entitled to is a statement from Mr. Ernst that he has none of those records in view of the decisions.

MR. ERNST: This isn't to Mr. Ernst. May I ask that you stop this?

THE COURT: This is Mr. Baldwin. I skipped to him.

MR. ROONEY: Mr. Ernst, please stop the stage play.

MR. ERNST: Well, will you stop dragging my name in when you know we are talking about Mr. Baldwin?

MR. ROONEY: I didn't drag your name in. You did that yourself, 20 years ago, in this whole Red movement.

THE COURT: I suppose that the Communist Party, like every other political party in the United States, has a chairman. I don't happen to know who he is. Now, who is the chairman?

MR. ROONEY: I don't know.

THE COURT: I mean it is not anybody on these subpœnas.

MR. ERNST: I don't know who it is, your Honor.

THE COURT: So that's out.

MR. MATTHEWS: Maybe it is Stalin. Who knows?

THE COURT: Now then with the exception of the CIO subpœna, which I will come to in a minute, we are left now with the American Civil Liberties Union and the Garland Fund records. Again I say that I understood that the Garland Fund records were already in evidence.

MR. MATTHEWS: What they want on the subpœna, to be specific, to be very frank with you—there is no criticism; I suppose these subpœnas were gotten up in a hurry—the Garland Fund subpœna should particularize the particular checks, contributions and correspondence of contributions to those subversive movements which the witnesses have already testified influenced them and the people of Jersey City, by reason of the fact they appeared in newspapers, not to allow these fellows, who are members of these subversive groups, to come into the city.

Now, I am perfectly frank as a lawyer in saying that I think the subpœna should be definite as to the particular document wanted from the Garland Fund. I don't think the subpœna should be quashed, however. I think the subpœna ought to be amended to that effect, or if they would like a brand new one, accept service of it, we will serve it ourselves. Mr. Rooney hands me a note and says——

THE COURT: The subpœna as to the Garland Fund is withdrawn?

MR. MATTHEWS: Oh, no.

MR. ROONEY: Oh, no, no.

THE COURT: Not withdrawn?

MR. MATTHEWS: Oh, no, not withdrawn. We want you to rule on everything.

THE COURT: Well, you can't amend a subpœna, can you? Can you amend a subpœna?

MR. MATTHEWS: Yes.

THE COURT: I thought you couldn't, legally.

MR. MATTHEWS: If they will consent, we can.

MR. ERNST: No, if your Honor please, we will not consent. I think the thing to do is to draw up a new subpœna for each one of these people, and then it seems

to me that the only proper way to proceed, in view of the fact that their information on which they based these subpœnas was obviously so scant, they ought to state to the court the basis for thinking that the material to be subpœnaed will be material.

I have yet to hear the defense under the present pleadings where it may be material. There is not a single word, your Honor in the present pleadings under which it could get in, the Garland Fund, the I. W. W., the Communist Party, the Democratic Party——

MR. MATTHEWS: If the court is going to deny it, that is the court's business. We don't consent to it, and we vigorously oppose the Court's denying the production of the records under the subpœnas.

THE COURT: Well, we have found out, Mr. Matthews, that all of the requests of Mr. Ernst, except the Garland Fund and the American Civil Liberties Union, should have been directed to other persons.

MR. MATTHEWS: We found it out because Mr. Ernst has told the Court this morning that he is not connected with any of those organizations. I suppose the information of the scrivener of the subpœna was that he was.

THE COURT: Well, I am not passing any personal comments.

MR. MATTHEWS: I know, but as I listened to you I feared that you thought we just took it out of thin air.

THE COURT: It isn't my business to make any accusation, Mr. Matthews.

MR. MATTHEWS: No, I know that; I know you don't, either; it is neither your business nor your habit. But I don't want to leave that in your Honor's mind. My thought is this, your Honor, that since Mr. Ernst as an officer of the court, represents to the court that he hasn't got the records and has no connection with the institutions as an officer, then, of course, the subpœnas

can't stand for those. On the Garland Fund, the Civil Liberties Union and the CIO, we await your ruling with a great deal of interest.

THE COURT: Well, we haven't reached the CIO. As to the Garland Fund and the American Civil Liberties Union, you correctly, it seems to me, say that the subpœna will have to be more specific.

MR. MATTHEWS: Not as to the Civil Liberties Union, only as to the Garland Fund.

THE COURT: Let me see what is asked for in the Civil Liberties Union.

MR. MATTHEWS: All the records.

MR. ERNST: Your Honor please——

MR. MATTHEWS: Now, won't you let the Court please look at the subpœna?

MR. ERNST: Wouldn't it be the orderly procedure to have a petition prepared, as is the usual case. These subpœnas duces tecum under the practice are issued on a petition where any question is raised. As soon as they try to formulate into a petition what they want, then you will get to something we can really argue.

Now, may I say for the American Civil Liberties Union, we have hundreds of cases, hundreds literally every year. Will we bring all that in? Obviously, it is not material; obviously under all the cases no such subpœna can stand up, it must be specific.

MR. MATTHEWS: We stand on the subpœna as is of the Civil Liberties Union.

MR. ERNST: I move to quash as is; that is the issue.

THE COURT: What does it say in the Civil Liberties Union subpœna?

MR. MATTHEWS: I cannot hear your Honor.

THE COURT: I beg your pardon, my voice sank. That was my fault.

Now, it says here, I have got it, "Any books, papers or records in your possession or under your control of the American Civil Liberties Union." Now, obviously, Mr. Matthews, that is too broad as written.

MR. ERNST: If Mr. Matthews will stand on that we will stand on it.

MR. MATTHEWS: I will stand on that.

THE COURT: You don't seriously contend, or do you—I will put it the other way—do you seriously contend that a subpœna in that language is valid?

MR. MATTHEWS: Yes, your Honor, and I am sure your Honor will find everything that they have done, that they have produced under that subpœna, very material to this issue.

THE COURT: "Any books, papers or records in your possession or under your control." How long has the Civil Liberties Union been in existence?

MR. ERNST: At least, I should imagine, twenty years, and offices throughout the United States during the last decade.

MR. MATTHEWS: We stand on the Civil Liberties subpœna as is.

THE COURT: Well, I will have to call for petitions and then I will have to call for authorities on that point.

MR. MATTHEWS: I cannot hear you.

THE COURT: And then I will have to call for autorities on that point and if necessary take testimony.

MR. MATTHEWS: I abide your ruling today on the Civil Liberties Union, the Garland Fund and the CIO.

THE COURT: I don't remember mentioning the CIO. I thought—let's get it straight—I thought you had agreed, Mr. Matthews, that the Garland Fund, which is in exactly the same language as the American Civil

Liberties Union, should be amended and made more specific.

MR. MATTHEWS: Yes, but they refused to amend so I stand on it as is.

MR. ERNST: That is agreeable to us, we don't amend. We say that on that subpœna in relation to CIO, Civil Liberties Union and Garland Fund, as I understand it, as a result of the exploration by your Honor, that is what is left, we are perfectly content to stand on that as it is without a petition, without a statement as to materiality. We come frankly, as I see it, within a long line of cases. Now, if Mr. Matthews and counsel for the defendants are ready to stand on it also, it seems to me that that is the issue which should be briefed and presented. I have an outline of a brief here today and can get the brief to you by tomorrow.

MR. MATTHEWS: I can get you no brief by tomorrow, Judge, in fact I don't know how much longer today I can remain out of my bed.

THE COURT: Now, let's take up the CIO.

MR. MATTHEWS: I stand on that subpœna as is.

THE COURT: Let's take it up, shall we?

MR. ERNST: May I have the subpœna read? I haven't got a copy of it here.

THE COURT: I want to inquire if—that is directed to Mr. Carney.

MR. MATTHEWS: Yes, it is, your Honor.

THE COURT: Yes, it is, and I want to inquire whether he has in his possession any records of the Steel Workers Organizing Committee of the Committee for Industrial Organization, the United Electrical Radio and Machine Workers of America and the United Rubber Workers of America.

MR. MATTHEWS: In New Jersey.

THE COURT: It doesn't say in New Jersey but I will be glad to have it answered.

MR. MATTHEWS: Well, in the State of New Jersey, including all the minutes. I take it that that is what the subpœna means. Just a minute, did you mean New Jersey?

MR. HERSHENSTEIN: Yes.

THE COURT: With that addition will you inquire of Mr. Carney if he has any of the records.

MR. ERNST: Your Honor please, I think I am going to object unless you insist that I not do it, to having an informal discussion with inquiries addressed to us, when as a matter of practice the form should be that the defendant should present a petition to the Court stating on what grounds they believe that the information is in the possession of the person to be subpœnaed and whether or not it would be material, and in respect to what portion of the complaint or the answer it would be relevant.

THE COURT: Well, I have agreed to that, but I thought it was really less futile to find out first, which we seem to have done with some success, whether the person——

MR. ERNST: May I say that I am unable to state because as I read that subpœna it is different than what Mr. Matthews, as I understood it, asked his associate counsel as to the meaning. I don't yet know what it means. I don't believe that anybody can definitely say what that subpœna calls for.

THE COURT: Well, has Carney got the records?

MR. ERNST: Of what?

THE COURT: Of the Steel Workers Organizing Committee in New Jersey, we will add; the United Electrical Radio and Machine Workers of America in New

Jersey, and the United Rubber Workers of America in New Jersey.

MR. MATTHEWS: Have you got the correspondence between Mr. Ernst and himself, for instance?

MR. ERNST: He hasn't got those records, he hasn't those records, your Honor.

MR. MATTHEWS: Then we may produce, I take it, evidence if he hasn't got them that will be secondary.

THE COURT: I am not advising you about that.

MR. ROONEY: Now, if your Honor will just take a look at that very first paragraph of the bill of complaint you will see that they say that this Committee for Industrial Organization is an organization which has for its main purpose the organizing of unorganized strikers of affiliated unions, etc. They certainly must have some records if they are affiliates.

THE COURT: It does not follow.

MR. ERNST: May I say Mayor Hague is an affiliate of the National Democratic Committee. I take it we couldn't ask him for the records of the National Democratic Committee. He is more than an affiliate; he is vice-chairman.

MR. ROONEY: That is an entirely different situation. We are addressing this subpœna to the head of this organization in the State of New Jersey, which is the fountainhead of these various organizations.

THE COURT: He says he hasn't got the records. If you think he has, punish him for contempt.

MR. MATTHEWS: Well, your Honor, he says he hasn't got the records—he is not an officer of this Court.

THE COURT: I should say he said through his counsel.

MR. ERNST: Your Honor please, there may be people in the State of New Jersey who have those

records; they may find them. They couldn't, on a petition to the Court, have gotten any subpœna like this because they would have had to allege that on some kind of information Carney has them and nobody could have told them that Carney has those records.

MR. MATTHEWS: I don't believe, Judge Clark, that a more truthful expression of the truth of our defense could be had than the attitude of this counsel this morning in trying to foreclose all these records.

THE COURT: Well, I not only wish, Mr. Matthews, I must insist that you cease these personalities.

MR. MATTHEWS: Well, you didn't insist on keeping out the personality that he indulged in concerning the Mayor of Jersey City when I asked you to, sir.

THE COURT: I at least try, Mr. Matthews, to treat each side alike, and I insist on personalities being excluded.

MR. MATTHEWS: There is nothing personal in say- that this morning this man is opposing the introduction of every bit of evidence that the defense wants to produce. We will stand on your Honor's ruling on the Garland Fund, the CIO and the Civil Liberties Union— I say we will stand on it, we await it, sir.

MR. ERNST: Your Honor please, we are not oppos- the introduction of any of this. We merely ask that a petition be drawn up to the persons who have the control of the documents and not the people who have nothing to do with the documents. In the second place, at the proper time, we would like to argue the materiality of the evidence even if the proper parties are named.

MR. MATTHEWS: We don't intend to have him tell us what to do; we want you, your Honor.

THE COURT: I shall have to ask, Mr. Matthews—we have discovered, I think it is fair to say, that with the

exception of the Garland Fund, the Civil Liberties Union and the Regional office of the CIO, not including its affiliates, the wrong persons have been named in the subpœna duces tecum. As to those three it seems to be agreed that the right persons have been named. But it is asserted that there are legal objections to the evidence called for in the subpœna. I think that should be put in proper legal form and then I will rule on it, and if I rule against you you may have your appeal; if I rule in your favor the other side may have its appeal.

MR. MATTHEWS: Thank you. Judge Clark, please, Mr. Hamill has the wrong notion, that you denied subpœna to these people. You didn't. All you said is the wrong people have been named in the subpœna.

THE COURT: Yes, I made no ruling on that.

MR. HAMILL: Isn't your Honor's ruling that the subpœna cannot go to Mr. Ernst?

THE COURT: That's right, I made no ruling on the point.

MR. ERNST: I thought, your Honor, you reserved judgment or even haven't heard argument as to whether if the proper parties are subpœnaed, the material should be brought into court.

MR. MATTHEWS: In other words, your Honor, Mr. Ernst wants you to rule, it seems to me, by that request that no evidence shall be brought into court from these specific organizations.

THE COURT: I insist upon a petition accompanying the subpœna as to the three in which the right parties are named so that I may rule and you may have your exception, or the other side may have its exception.

MR. MATTHEWS: We shall issue subpœnas anew, your Honor, as we understand the law. Then, of course,

if your Honor quashes them, that is our concern, and if you are right we are wrong or if you are wrong we are right.

THE COURT: I think you should if you want to continue with what you think to be the right party, you should do it in the form of a petition.

MR. FRAZER: The practice is perfectly well established. I see no reason why we should have any argument of this kind over a futility. The practice is well established that there should be a petition based on something such as the reasonable knowledge that would be required to get a search warrant, let us say, and that that should be submitted to your Honor before these subpœnas are issued. I assume, from the type of subpœna as they were made, that the information would be so slender, so tenuous, that there would not be a fair basis for your Honor to order the subpœna to issue but we may at least argue that at that point.

THE COURT: The reason being, of course, that automatically the clerk issues the subpœna and we have to have a record of it for appeal.

MR. ROONEY: Also in connection with this and before the court adjourns, we had considerable difficulty in locating and serving a number of these people to whom the subpœnas were addressed.

THE COURT: I only had four.

MR. ROONEY: So that the effect——

THE COURT: Five.

MR. ROONEY: So that the effect of your Honor's ruling may be definitely understood, do we understand that these persons who are named in these subpœnas have to respond to this Court, because we will have difficulty in locating them and serving them again. In other words, we want them in court. If the Court rules on the sufficiency of the duces tecum as an auxiliary

matter, on the main subpœna we think we are entitled, inasmuch as they were served and brought within the——

THE COURT: There are only five. Mr. Hays was in court the other day.

MR. ERNST: Mr. Hays and Mr. Baldwin were in court in response to the subpœna; Mr. Carney and my myself have been here every day. Harry Ward was not here but his wife was here and spoke to Mr. Hamill at the time.

MR. FRAZER: Mr. Scott Nearing was here.

MR. ERNST: He is not one of our people.

MR. ROONEY: Do you represent the editor of the *Daily Worker*?

MR. ERNST: We do not, sir I have said clearly to the Court that I am representing five of these parties and those people were excused in part by you and not by me.

MR. ROONEY: Then all these witnesses will be produced, I understand?

MR. ERNST: I understand an arrangement has been made by Mr. Hamill with them, is that right, Jim? Did you make some arrangement with Mr. Baldwin as to letting him know when you wanted him?

MR. HAMILL: No, not as to Mr. Baldwin, we didn't hear from him at all, but you and I before the Court agreed that as to Dr. Ward we should not keep him and we agreed in general that the persons subpœnaed should hold themselves on call to be here within a reasonable time after they were notified by telephone.

THE COURT: I don't know Mr. Baldwin by sight, I do know Mr. Hays by sight; he was here the other day.

MR. ERNST: There is no difficulty in getting two of the five, two have been here every day; one sent his

wife because he is a Professor of Divinity in Union Theological Seminary.

MR. HAMILL: So long as we can get them we are not interested in holding them in court, your Honor.

(At this point an adjournment was taken to Tuesday, June 21, 1938, at 10:30 A. M.)

Tuesday, June 21, 1938.

Case continued.

Appearances as before.

FRANK HAGUE, resumed the stand.

THE COURT: All, right, Counselor.

MR. MATTHEWS: Yes, your Honor.

Your Honor, I am waiting for an exhibit which I left on the table inside.

THE COURT: That's all right.

MR. MATTHEWS: They have gone to get it.

Now, if your Honor please, at page 1772 in the testimony your Honor will recall we had a discussion about the testimony of Mr. Foster before the Fish Committee and your Honor wanted the hook-up between the CLU, the Civil Liberties Union, and the Garland Fund or the American Fund for Public Service, and Foster, and we showed Foster to be a director of the Garland Fund and——

MR. FRAZER: No, I beg your pardon. They read certain things out of newspapers.

MR. MATTHEWS: No, no; no, no. Here is a book. In this book here——

MR. FRAZER: That's not in evidence.

MR. MATTHEWS: —you find the name of Foster as one of the directors of the Garland Fund.

MR. FRAZER: All right; all right, that's a different statement, Mr. Matthews.

MR. MATTHEWS: Pardon me?

MR. FRAZER: That's a different statement. I don't say that his name may not be in that book. You have not proved it yet.

MR. MATTHEWS: And I now want to ask the witness whether or not he having said that he was familiar with the Fish report, whether or not he had not read the testimony of Mr. Foster from that report as outlined in the report.

MR. FRAZER: I object to the testimony of Mr. Foster as not being in any way binding on these plaintiffs or material to this issue.

CROSS-EXAMINATION (Continued).

By MR. MATTHEWS:

Q. (Continuing). 1011 of the report——

THE COURT: He asked the witness whether he read it or not. He may answer yes or no.

A. Yes, sir.

Q. In that report did you read——

MR. FRAZER: I object to Mr. Matthews' proceeding to read things out of the report purporting to have been stated by Mr. Foster.

MR. MATTHEWS: Your Honor has allowed it?

THE COURT: Yes. I also stated, Mr. Matthews, I wanted the testimony, not just the report.

MR. MATTHEWS: It is the testimony.

THE COURT: No, the whole testimony.

MR. MATTHEWS: I will give you that at the close of our case.

Q. Did you read: "The Chairman: Does the Communist Party of America advocate the confiscation of all private property?

"Mr. Foster: The Communist Party advocates the overthrow of the capitalist system and the confiscation of the social necessities of life; that is, the basic industries and other industries for producing the means of livelihood of the people. By the property of individuals, personal belongings, and so on, no; that is, in the sense of their personal property."

A. Yes, sir.

Q. "Does the party advocate the abolition and destruction of religious beliefs?

"Mr. Foster: Our party considers religion to be the opium of the people, as Karl Marx has stated, and we carry on propaganda for the liquidation of these prejudices among the workers."

Did you read that?

A. Yes, sir.

Q. "The Chairman: Do the Communists in this country advocate world revolution?

"Mr. Foster: Yes; the Communists in this country realize that America is connected up with the whole world system, and the capitalist system displays the same characteristics everywhere—everywhere it makes for the misery and exploitation of the workers—and it must be abolished, not only on an American scale, but on a world scale."

Did you read that?

A. Yes, sir.

Q. And this: "The Chairman: Now, are the Communists in this country opposed to our republican form of government?

"Mr. Foster: The capitalist democracy—most assuredly. We stand for a workers and farmers' gov-

ernment, a government of producers, not a government of exploiters.

"The Chairman: They are opposed to our republican form of government?

"Mr. Foster: Most assuredly.

And they desire to overthrow it through revolutionary methods?

"Mr. Foster: I would like to read from the program of the Communist International at this point: The Communist International program says: 'The conquest of power by the proletariat does not mean peaceful capturing of ready-made bourgeois state machinery by means of a parliamentary majority.' The bourgeoisie resorts to every means of violence and terror to safeguard and strengthen its predatory and political domination. Like the feudal nobility of the past, the bourgeoisie cannot abandon its historical position to the new class without a desperate and frantic struggle; hence the violence of the bourgeoisie can only be suppressed by the stern violence of the proletariat.'"

Did you read that?

A. Yes, sir.

Q. And finally: "The Chairman: Now, if I understand you, the workers in this country look upon the Soviet Union as their country, is that right?

"Mr. Foster: The more advanced workers do.

"The Chairman: Look upon the Soviet Union as their country?

"Mr. Foster: Yes.

"The Chairman: They look upon the Soviet flag as their flag?

"Mr. Foster: The workers of this country and the workers of every country have only one flag and that is the Red flag. That is the flag of the proletarian revo-

lution. It is also incidentally the flag of the American Revolution in its earlier stages. The Red flag has been the flag of revolutions for many years before the Russian revolution.

"The Chairman: Could you answer a little more definitely and specifically whether you owe any allegiance to the American flag?

"Mr. Foster: I have stated my answer.

"The Chairman: I do not want to force you to answer if it embarrasses you, Mr. Foster.

"Mr. Foster: It does not embarrass me at all. I stated very clearly the Red flag is the flag of the revolutionary class, and we are part of the revolutionary class."

Did you read that?
A. Yes, sir.

THE COURT: We had in the other case last spring, as I remember it, Mr. Matthews, the actual platform of the Communist Party.

MR. MATTHEWS: Of course, your Honor, I don't know. I am perfectly willing if your Honor wants it to produce it, but from my cross-examination of this witness—of course, I had to prepare it according to my lights.

May I have the exhibit of the Newark *Star Eagle* that was introduced on last Friday? I don't remember the number.

THE CLERK: I will get it. Here it is (producing).

MR. MATTHEWS: I thank you.

Q. I show you Exhibit P-39 and ask you do you remember having been shown that by Mr. Frazer or by Mr. Ernst, I disremember which——
A. Mr. Ernst.

Q. That is a picture of you with your lawyers in this case, is it not?

A. Yes, sir.

Q. While we are waiting I will go on with another thing, at page 1681 of the testimony you were questioned by Mr. Ernst about sending people to New York and Mayor LaGuardia sending people back to Jersey City. I show you the New York *Tribune* of June 2d and ask you if you have seen the statement of Mayor LaGuardia with reference to crooks during the World Fair——

A. Yes.

MR. FRAZER: I object to that. He has seen the statement, he said.

Q. It is alleged there has been no instance of the Mayor sending people out of the city. I have read Mayor LaGuardia's statement that he will send them over the bridge instead of by the ferry.

MR. FRAZER: You know the proper way of proving that.

MR. MATTHEWS: Not so early in the morning, I do not want to be castigated by you.

With the Court's permission I will prove it.

The second paragraph, your Honor, down below. May I state for the record that I wanted to prove that there was another instance of a Mayor who decided on a way of sending people out of the city when he did not want them.

MR. FRAZER: Would you be kind enough to get away a little further so that we may hear the remarks by the Court, Mr. Matthews?

THE COURT: I will not allow it.

MR. MATTHEWS: The purpose was to show that the Mayor in another city had advocated the same treatment that this Mayor had advocated, and since they had put his statement on the record I thought it would be

nice to put ours. May I say what was said by the Mayor of New York?

THE COURT: I will not allow it.

Q. I show you another picture from the Jersey *Journal*, May 2, 1938, and ask you did you see that picture before?

A. Yes, sir.

Q. Do you recognize Mr. Thomas in that picture?

A. I do.

Q. That is he with his hand raised?

A. Yes.

MR. MATTHEWS: I ask that it be marked for identification.

THE COURT: I am not myself acquainted with the subtleties of the Communist salute; I think we should have an expert on that.

MR. MATTHEWS: I think he is an expert in the salute. I do not know anything about a Communist expert.

MR. FRAZER: I will also call your Honor's attention to the date; it is a way off from the matters complained of here.

THE COURT: What is the date?

MR. MATTHEWS: May 2d. The picture in the *Star Eagle* is June something.

THE COURT: What is the date of the event?

MR. MATTHEWS: What event?

THE COURT: What was it?

MR. MATTHEWS: May first would be parade day or May Day, whatever they call it.

MR. FRAZER: May Day.

MR. MATTHEWS: May I ask it be marked for identification?

(Marked Exhibit D-16 for Identification.)

MR. MATTHEWS: You testified on direct examination that you have been Mayor of Jersey City for almost a quarter of a century.

A. Yes, sir.

Q. During all of that time have you ever allowed strike breakers in your city?

A. Never.

Q. Will you state the policy you would have had with reference to strike breakers in Jersey City?

MR. FRAZER: I object to that; it is not cross-examination. We have not gone into the question of strike breakers in any way.

MR. MATTHEWS: His attitude toward labor has been questioned very largely. The only purpose is to show on cross-examination what his attitude toward labor has been.

THE COURT: It is a matter of defense.

MR. MATTHEWS: I do not want to offer it as defense, Judge Clark.

THE COURT: I will allow it.

Q. You may state it, the Court says.

A. I have always been opposed to importing strike breakers into labor disputes because from my experience and the experience that I am familiar with in other cities, it was always leading to bloodshed, riots and disorder, and the loss of life in a great many instances, so I make it a policy where there would be any labor controversies it would have to be adjusted around the conference table and not with shotguns and not with riots and disorder, and that my investigation with strike breakers led me to believe they were all ex-convicts and thugs and gangsters, and to import that element of people into my city would lead to nothing but the destruction of life and property and disorder. I make it a rule they should never be allowed into the city.

Q. Mayor Hague, from your clipping files in Jersey City have you had photostatic copies made of the New York *Times*, the New York *Sun*, and other papers which had to do in the year 1937 with the connection as alleged in the press between the CIO and the Communists?

A. I did.

MR. MATTHEWS: Instead of subpœnaing the files of the New York *Times* and the New York *Sun*, I have arranged to have these photostatic copies made. I would like, if your Honor please, to have the Mayor shown these and to ask him if they are photostats from the clippings from the papers he had.

THE COURT: All right.

Q. Are they, Mr. Mayor? They were handed to me this morning by the attorneys who have helped prepare the case. Will you look at them carefully, and when the paper you look at is before you give us the name of each one.

A. This the New York *American*——

MR. FRAZER: To save time I will ask Mr. Matthews whether they are labeled with the dates and the names of the papers from which they were taken?

MR. MATTHEWS: Yes.

MR. FRAZER: And you know they are properly labeled and dated?

MR. MATTHEWS: Yes.

MR. FRAZER: I am willing to take Mr. Matthews' statement for that.

MR. MATTHEWS: May I represent to Mr. Frazer that they were properly photostated from those papers and properly labeled and dated at the company's offices because Mayor Hague's clippings were all mixed up.

MR. FRAZER: Very well; if counsel represents to me that these are truthful statements as to the papers from which they are taken and the dates on which they were

published, I have no desire to waste the time of the Court in having futile statements to that effect made for each clip.

Q. These newspapers that were given to me this morning were newspapers that all related to the year 1937, weren't they, Mr. Mayor?

A. Yes, sir; yes, sir.

Q. And I asked you after the last hearing, because of the ruling of the Court that anything after 1938 could not be used, that you find if or not you had any records of 1937 papers.

A. I did.

Q. I show you the New York *American* for the 9th of March, 1937, an article by Tyrell Krum, Universal Service correspondent, "CIO drive launched in Moscow. Green says"——

MR. FRAZER: Now, I object, your Honor.

A. Yes, sir.

Q. Is that a paper which you actually read, Mr. Mayor?

A. Yes, sir; yes, sir; the *American*—I always read the *American*.

Q. The photostat has been made in the New York office of the paper, however. Why was that, Mr. Mayor?

A. Because we had the copies of it, and had the memorandum, and we sent over to get the original and get from the morgue just exactly what we learned of, and what we read and was familiar with.

Q. And when you say——

A. They were all photostated in the newspaper office.

Q. Yes. And when you say you had a record of them, did your secretary have a record—

A. Yes.

Q. —which I saw, of each individual newspaper?

A. Yes.

Q. And the reference thereto?

A. Yes. We wanted to keep our files.

Q. Where is the paper's name on this?

A. At the bottom.

Q. Oh, yes. I show you an article of the New York *Times* by Mr. Louis Stark, dated 5/24/37, headed "Red CIO assailed in A. F. of L. parley."

A. Yes, sir.

Q. Did you read that article?

A. I did.

Q. You are sure, Mr. Mayor, that at the time that article came out you read it?

A. I read it.

Q. And that this was photostated because of a reference that was in your files at that date?

A. I read every article on CIO and Communism and disorder and labor disputes.

MR. FRAZER: Now, are you going to ask the same——

MR. MATTHEWS: No, not many; I just want one or two more.

Just let me get over again here to Mr. Rooney. Will your Honor excuse me just a minute? I will save time.

Q. I show you an article by Russell B. Porter—Russell B. Porter, yes—of the New York *Times*, dated 3/4/37. This is the beginning, "Flint prepares for new riots as crowds pour into strike zone." Did you read that article?

A. I did.

MR. MATTHEWS: May I leave the ones up to here, Spaulding?

MR. FRAZER: Sure.

MR. MATTHEWS: —so I can have them marked for identification? You can look at them, of course, if you like.

MR. FRAZER: All right.

Q. I ask if this is another of those clippings, dated 1/5/37, an article by Russell B. Porter, from the New York *Times*, headed, "4000 at Flint ask return to work. Mass meeting hears auto strike laid to minority of 5 per cent and prays for peace. Troops are reinforced. Rumbles of teamsters walk-out that might tie up the motor city."

Did you read that?

A. I did.

Q. That specific article, sir?

A. I did.

Q. I show you this one, dated 1/31/37, an article by Russell B. Porter of the New York *Times*, "Court test today on Flint sit-down. Men in plants arm. Strikers (quote) 'not worrying about any injunction' the GMC may obtain. Ready for five day siege. They have food as well as heavy clubs"——

MR. FRAZER: I object.

Q. (Continuing.) —"blackjacks"——

MR. FRAZER: You have read enough to identify it, haven't you, Mr. Matthews?

MR. MATTHEWS: This is the headline only.

MR. FRAZER: All right. You have identified it. There is no use of reading it all into the record.

MR. MATTHEWS: I am not.

MR. FRAZER: I object to further reference to it. He has identified it.

Q. Did you read that, Mr. Mayor?

A. I did.

Q. I show you the *Herald Tribune* photostat and ask you again is that another one of those photostats made in the manner and after the reading that you testify you did in this case?

A. It is.

Q. And it is dated 2/3/37, and the headline, "C. I. O. program"——

MR. FRAZER: I object.

Q. (Continuing.) —"called path to Sovietization."

MR. FRAZER: I object to any further statement. May I ask the Court for a ruling? He has identified it and is having it marked for identification. The paper and date of the clip shown is completely sufficient.

THE COURT: Yes.

Q. I show you another one from the——

MR. MATTHEWS: What paper, Mr. Rooney, please?

MR. ROONEY: That is the New York *Times*.

Q. (Continuing.) —from the New York *Times*, dated 3/29/37, headed, "A. F. of L."——

MR. FRAZER: That is enough to identify it.

Q. (Continuing.) —"brands"——

MR. FRAZER: I object.

THE COURT: No, you must not.

MR. MATTHEWS: Well, your Honor, is all the article to——

THE COURT: Well, you are going to offer them in evidence, aren't you?

MR. MATTHEWS: On our case. I can't now.

THE COURT: Well, when you offer them in evidence, you can read them. You can't read them in part this way. Why waste time?

MR. MATTHEWS: I was only reading the headlines, Judge Clark.

MR. FRAZER: You can identify them and let them be marked for identification.

Q. Well, finally, did you see that one of 6/7/37? Just look at the headline; don't read it because the Court says it should be read on our direct case.

A. Yes.

MR. MATTHEWS: Now, if your Honor please, may I have the papers that I have thus far indicated marked in evidence seriatim?

THE COURT: Yes.

MR. FRAZER: Do you mean for identification?

MR. MATTHEWS: I mean for identification. I am sorry. I will try to give them to you seriatim.

Well, let's get the record straight on it. I will just refer to dates: New York *Times*, 5/24/37.

(Marked Exhibit D-17 for identification.)

MR. MATTHEWS: New York *American* 3/9/37.

(Marked Exhibit D-18 for identification.)

MR. MATTHEWS: New York *Times* 6/7/37.

(Marked Exhibit D-19 for identification.)

MR. MATTHEWS: New York *Times* 3/29/37.

(Marked Exhibit D-20 for identification.)

MR. MATTHEWS: New York *Times* 1/31/37.

(Marked Exhibit D-21 for identification.)

MR. MATTHEWS: New York *Times* 1/15/37.

(Marked Exhibit D-22 for identification.)

MR. MATTHEWS: New York *Times* 3/4/37.

(Marked Exhibit D-23 for identification.)

MR. MATTHEWS: *Herald Tribune* 2/3/37.

(Marked Exhibit D-24 for identification.)

MR. MATTHEWS: That, Judge Clark, doesn't happen to be the order that I presented them, but I thought it was better to have them identified for the record.

THE COURT: All right.

Q. Mr. Mayor, after twenty-five years as mayor of your city, I take it that you had occasion to know the temper

of your people of your city in November, 1937, and in January and February of 1938?

A. I did.

Q. What was the attitude of the people of your city as you knew it at that time?

MR. FRAZER: Now, even though he knows it, I object to his testifying.

THE COURT: We have had it a great many times, Mr. Matthews.

MR. MATTHEWS: Very well; if that is on the record and your Honor is satisfied that it is, I will withdraw the question.

Q. I show you a clipping taken again, Mr. Mayor, from the data presented to me this morning, and ask you whether or not you read that article.

MR. MATTHEWS: The name of the paper, please, Mr. Rooney?

THE WITNESS: New York *Times*.

Q. New York *Times*, 4/24/37?

A. Yes, sir.

Q. And is it an article referring to the CIO and the Reds?

A. It is.

MR. MATTHEWS: I ask that that be marked for identification.

(Marked Exhibit D-25 for identification.)

Q. Mr. Mayor, you are conversant, I suppose, with the difficulty the country has been experiencing, particularly the owners of plants, with the sit-down strikes during 1937?

A. I am.

Q. I show you a clipping with reference to the sit-down strikes of General Motors dated 2/31/36.

MR. FRAZER: May I ask what relevancy that has to our direct examination?

MR. MATTHEWS: It shows the tie-up between the CIO union and the violence of Communism.

MR. FRAZER: That, I imagine, is part of his defense.

MR. MATTHEWS: I asked the question because it shows something on this matter. It is cross-examination because the Mayor has said the CIO and the Communists were working hand in hand.

THE COURT: I have gathered that you intend to prove that fact. You just submit newspaper articles and opinions of certain persons.

MR. MATTHEWS: I wanted on cross-examination of this witness, when he was urged to say what was his reason for considering the connection between violence——

THE COURT: He has had that a great many times. The witness has been very explicit in his reasons.

MR. MATTHEWS: Doesn't your Honor think the sit-down strikes which is a CIO movement should be before your Honor?

THE COURT: It is a matter of defense, it seems to me. If permissible, it is certainly a matter of defense.

MR. MATTHEWS: This is cross-examination of a witness who alleged this violence and attitude of the CIO leaders permitted the attitude of a man like Carney who was leader of the CIO and was undesirable——

MR. FRAZER: I object to a speech by Mr. Matthews.

THE COURT: The witness has already asserted it several times.

MR. MATTHEWS: May I make the offer?

THE COURT: Yes, sir.

MR. MATTHEWS: I want to offer a clipping dated 2/31/36 of the New York *Times* dealing with the CIO and sit-downs and violence——

MR. FRAZER: I object to counsel's quoting what the statement is.

MR. MATTHEWS: That is the general subject that it deals with, sit-downs and violence.

MR. FRAZER: It is just a speech by Mr. Matthews.

THE COURT: I will ask the witness whether he read the stories in numerous papers which asserted that there were sit-down strikes in various parts of the country.

MR. MATTHEWS: The witness is to answer your Honor's question?

THE COURT: Yes.

By MR. MATTHEWS:

Q. Will you answer the Court's question?

A. Yes.

Q. What papers?

A. *Times, American, Herald Tribune,* the *Sun, World Telegram,* all the local papers, Jersey City local papers, Newark *Evening News*—as a matter of fact all the papers available in this part of the country.

Q. On those occasions did you have any others, on any occasion did you ever send for papers, particularly papers from the scenes of these strikes?

A. Yes. We made it a practice to write to the various police officials to obtain news articles to ascertain what their conduct was there.

MR. MATTHEWS: I ask that that be marked for identification.

(Marked D-26 for identification.)

MR. MATTHEWS: Your witness, gentlemen.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Mayor, you remember when we first started the examination together I was using a copy of your address at Jersey City on January 6th?

A. At the Armory?

Q. Yes.

A. Yes.

Q. You had occasion to refer to it on several occasions during the cross-examination and found it to be accurate?

A. I don't know whether that is my speech or not.

Q. Would you mind looking over it and telling me whether it is?

A. I talked for only about three minutes and I do not imagine I can deliver that speech in three minutes.

MR. MATTHEWS: I will stipulate it, Judge Clark, if he had delivered it. Is it a press release, Spaulding?

MR. FRAZER: It is the speech on the occasion of the radio relief.

THE WITNESS: Where did you obtain this?

Q. I don't know frankly.

A. Of course, I do not want to say it is my speech. Just parts of it—the opening, yes, yes.

Q. I had assumed it was a copy which had been sent around to the newspapers on the occasion of a press release.

MR. MATTHEWS: If you do not recognize it I will object to it.

MR. FRAZER: My associate counsel tells me that they obtained it from the station WOR.

A. I would rather you examined me on any part of it; I would rather not accept it as my speech. You examine me on any part of it. It is too lengthy.

Q. Did you send WOR a copy of what was to be your speech that evening in advance?

A. I do not know; I can't say that I did. That is apparently the rule, but I have never lived up to that rule because I have always held and made it a rule that that advance copy—I do not like it going out because Mr. Ernst

that night was ready to answer my speech and answer my talk and I withheld it, I am sure, for that purpose, because he was on the air right after me.

Q. You won't accept it?

MR. MATTHEWS: I can't accept it, Spaulding.

MR. FRAZER: I ask that it be marked for identification.

(Marked Exhibit P-41 for identification.)

Q. I show you here, Mr. Mayor, a clipping from the *Times* of December 27, 1937. I assume that you read the accounts of your own activities as they appear in those papers.

A. Where is the article concerning this? You have just cut out——

Q. Those are simply the remarks. It is a resume.

A. I don't know where this comes from.

Q. I will assure you it comes from the New York *Times*.

A. I will take your word for it.

Q. Thank you.

A. Yes.

Q. That substantially quotes you correctly?

A. Yes.

MR. FRAZER: I would like to offer that as a resume of the Mayor's remarks on that occasion.

MR. MATTHEWS: A resume or the quotations?

MR. FRAZER: The quotations.

MR. MATTHEWS: I have no objection.

MR. FRAZER: I offer it in evidence.

(Marked Exhibit P-42.)

Q. Mr. Mayor, I show you a clipping from the *Jersey Journal* of January 13, 1938, in reference to the Chamber of Commerce's fiftieth annual dinner at which you spoke. Do you recall that?

A. Yes.

Q. And I ask you whether that is substantially a report of the remarks that you made on that occasion?

MR. MATTHEWS: I object to that, if your Honor please; that calls for a conclusion. I have no objection to his being asked if he correctly quoted an article.

MR. FRAZER: I accept your amendation.

A. Yes, sir.

MR. FRAZER: I would like to offer that.

MR. MATTHEWS: If the Mayor recognizes his quotations—I take it only the quotations that you want to offer——

MR. FRAZER: That is all.

MR. MATTHEWS: No objection, then.

(Marked Exhibit P-43.)

Q. Now, Mr. Mayor, I think it was when Mr. Ernst was examining you that you stated you did not think that the City of Jersey City made any contribution to the expense of the veterans' meeting and that that was a matter of collection, if I recall.

A. I said it was possible; I was not sure.

Q. I show you a copy of the *Jersey Journal* of January 6th, page 9, and ask you whether an examination of that advertisement would refresh your memory as to whether or not there was a payment made by the city itself?

A. I don't think so; I don't think it has been paid yet, and the City of Jersey City is not going to pay it; it is going to be paid by the committee. Without the city has paid it I do not think it has been paid—that the bill has been approved by the city. My recollection is that they are not going to pay it and it is going to be paid by the committee.

Q. The proclamation on that page was made in your capacity as Mayor?

A. Yes, calling the people to respond to the call for Americanism.

MR. FRAZER: I offer it in evidence.

MR. MATTHEWS: I have no objection—just the one page?

MR. FRAZER: Just the one page.

THE WITNESS: There is three papers.

Q. Three pages?

A. Three papers; the *Jersey Journal*, the *Hudson Dispatch*, and the *Hudson Observer*.

(The same was received and marked Exhibit P-44.)

Q. Mr. Mayor, I show you here a clipping from the *Jersey Journal* of January 7, 1938, with what is alleged to be the text of your January 6th meeting.

A. This is the same as the ones that you showed me, isn't it?

Q. I assumed that it was because I assumed that both of them were accurate.

A. I assume that is correct.

MR. HERSHENSTEIN: He is reading the whole thing.

THE WITNESS: I would like to know whether the reporter got a copy of my address or whether he took that down that way. That looks like my address here.

Q. Would you be willing to identify it as your address?

A. Why, yes; I see nothing in it.

MR. FRAZER: I offer it in evidence.

MR. MATTHEWS: No objection. If the Mayor says that he said it.

(Marked Exhibit P-45.)

THE WITNESS: It is a patriotic address; I have no apologies of that.

Q. The recent great rally in Jersey City where you had a great parade and so on, that was also stimulated by your activity as Mayor, was it not, and I show you——

A. Isn't that the same one?

Q. No. This is June 3d. The other was preparatory to the earlier rally.

A. Was the other one for the armory?

Q. No, it was for the veterans. It was at the armory, I guess, yes. That was for the January 6th one, Mr. Mayor.

A. That is the armory.

Q. The one I am now showing you was preparatory to the demonstration in June?

A. Yes, sir.

Q. That proclamation was issued by you as Mayor of the City of Jersey City?

A. Yes, sir.

Q. And addressed to the people of Jersey City?

A. Yes, sir.

MR. FRAZER: I offer it in evidence.

MR. MATTHEWS: I have no objection to it.

(Marked Exhibit P-46.)

Q. Were the expenses for that paid by the city?

A. I don't know, but I would like to examine the records. I see nothing wrong for that, though, because it is a city matter; it is protecting the invasion of this Red army from coming in and destroying the city.

Q. Now, Mr. Mayor, you have been following with a good deal of care the activities of Congressman Hamilton Fish, haven't you?

A. Well, any public man like that. He is devoting his time to public service. Any man like he is, conducting investigations, yes.

Q. And you thought your minds ran well along the same way?

A. Yes, I did.

Q. Now, I want to show you a clipping from the *Times* of May 7, 1938, in reference to some of Mr. Fish's activities, and ask whether that came to your attention or not.

MR. HERSHENSTEIN: Mr. Matthews.

May we take a look at this, Mr. Spaulding?

MR. FRAZER: Surely. There is nothing up my sleeve.

MR. MATTHEWS: I don't see anything in that. I will wait for the questions, Mr. Hershenstein.

With the Court's permission, I address my confrere who doesn't hear me.

A. Did you want to know did I read that?

Q. Yes.

A. Yes, sir.

Q. And did you see the bill which was referred to in that article as having been introduced by Mr. Fish?

A. I never seen the bill. I seen the article.

Q. Well, from the article would you recognize what I show you, H. R. 10553, as the bill which is here referred to?

MR. MATTHEWS: I object to that conclusion. It is not for him to say that the bill is what is referred to in the article. That is not the way to prove the bill.

THE COURT: I guess the bill is a public record, isn't it?

MR. MATTHEWS: Well, it is quite an irrelevant matter entirely. I know it is a public record.

THE WITNESS: Sure.

MR. FRAZER: Well, I just wanted to direct the Mayor's attention to the fact that this bill was sponsored by the Civil Liberties Union.

MR. MATTHEWS: I object to that, if your Honor please.

THE WITNESS: I don't know.

MR. MATTHEWS: As I said before,——

MR. FRAZER: Just one moment, Mr. Matthews.

MR. MATTHEWS: Well, may I put my objection and the ground for it on the record?

MR. FRAZER: Yes.

MR. MATTHEWS: There are many people who do things for purposes that are ulterior, or utilitarian, and yet their ultimate, their final purpose, may be entirely different. I don't think it is relevant what the Civil Liberties League may have done in that matter, to this issue.

MR. FRAZER: Mr. Fish has been relied upon, and his views, reports about what he has done, everything has been put in here, almost ad nauseam, by Mr. Matthews, and I think it is at least proper that the Mayor, who admits having read this, should be enabled now to express the effect which such a statement has upon his mind.

MR. MATTHEWS: It is totally irrelevant to this issue, what Mr. Fish——

THE COURT: Well, it seemed to be the assertion, Mr. Matthews, am I correct in saying this, that Congressman Fish had a poor opinion of the American Civil Liberties Union?

MR. MATTHEWS: There isn't any question about it; not a poor opinion, but an opinion that was subversive of Americanism.

THE COURT: Well, then, it seems to me relevant if it is a fact that his opinion is not unqualifiedly poor.

MR. MATTHEWS: That is an absolute non sequitur, with respect to the Court. If, for instance, one of the bishops whom they used as a front to this organization in 1938 joined it mistakenly, I know they wouldn't be with it if they believed what is in the Fish Report. Now, if they came to Mr. Fish and asked him to sponsor a bill, certainly Mr. Fish would do it in the manner as you say.

THE COURT: Well, as I say, I don't know what connection—let me see the bill.

MR. FRAZER: The bill and the clipping in relation to it, sir. (Handing to the Court.)

MR. MATTHEWS: It seems to me, your Honor, that is the nearest consistency of rulings that since that had no relevancy to this issue, it shouldn't be lugged in here now.

THE COURT: Well, I will only allow it for identification, Dean Frazer, on the theory that it will have to be shown more closely, the connection between this American Civil Liberties Union and Mr. Fish.

MR. MATTHEWS: The bill wasn't passed, I am informed by Mr. Hershenstein.

THE COURT: I don't think it is relevant. It is only the mental state of the Congressman.

MR. FRAZER: I am making this offer, sir, because Mr. Fish has been brought in here, for all the statements that he has made about the Civil Liberties. Now, it is very possible that since the time of the Fish Report in 1931 and this date, Mr. Fish has realized that the Civil Liberties Union has a function to perform, quite other than that which he thought it had to perform in 1938.

MR. MATTHEWS: I object to that statement.

MR. FRAZER: And the fact that he is now fathering, sponsoring, legislation, at the request of the Civil Liberties Union, would indicate that he had changed his mind as to their character.

THE COURT: Well, it would seem to me that if Congressman Fish's mental state was a relevant issue, we should gather it from him, himself, not from some other evidence.

MR. MATTHEWS: Yes, I think your Honor is right.

THE COURT: Because the word "sponsored," as it appears in the newspaper article, may or may not be accurate.

Q. Mr. Mayor, did you believe——

THE COURT: I don't say that it isn't relevant, but it isn't properly proved; therefore you may mark it for identification.

MR. MATTHEWS: I accept your Honor's ground for my objection.

Q. After reading this article, did you believe that Mr. Fish had sponsored the bill?

A. Well, the article shows he did, Counselor.

Q. Yes.

A. Yes, sir.

Q. And on behalf of the American Civil Liberties Union?

A. So the article says.

Q. And you believed that when you read it in an article like this?

A. Well, I doubt whether I believed that about Mr. Fish, after his attitude and his opposition to the Civil Liberties. I would like to have more proof. I don't understand it.

Q. But in conjunction with the official copy of the bill which I have here.

A. Yes, that was fathered by him.

Q. And the statement, it was introduced by him at least?

A. Yes.

MR. FRAZER: I ask to have that marked for identification.

THE CLERK: As one exhibit?

MR. FRAZER: As one exhibit.

(Marked Exhibit P-47 for identification.)

Q. When the Young Investigating Committee came into Jersey City, did you regard that as an invasion, Mr. Mayor?

MR. MATTHEWS: I object, if your Honor please. That is totally irrelevant to this issue.

THE COURT: Yes, I sustain the objection.

MR. FRAZER: Exception, please.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Now, I understand that just recently, under the examination by Mr. Matthews, you said that you permitted no strikebreakers in Jersey City.

A. That's right.

Q. What was the difficulty in 1933, affecting the Hudson Builders Material Company and the Thomas Henry Company?

A. (No answer.)

Q. Do you remember a case where there was a lockout in Jersey City?

A. That was the coal drivers, wasn't it, and the building material drivers also?

Q. Yes. There was a lockout, wasn't there?

A. Yes.

Q. When there is a lockout the persons who take the places of those who are locked out are strikebreakers, aren't they, to all intents and purposes?

A. It depends upon where they come from. Our rule is that they must employ the local citizens to fill the places of those men on strike, that they are not to import thugs and gorillas into the city. That's out.

Q. Well, after A. F. of L. men were thrown out by their employers, you put upon all of the trucks that went to those places a policeman, didn't you?

MR. MATTHEWS: "You put on"—I object to that.

A. No, sir, I did not.

Q. The police department of Jersey City——

A. We never allow a policeman to go on a truck or any other vehicle passing through the city. You will find that there may be two or three trucks moving with a police car following them around the streets, to protect them from

assaults and disorder. Naturally, you have got to give them some police protection, if they move vehicles through the city.

Q. Where did you get these men from that took the place of those who were locked out?

A. Well, you had better ask them.

Q. Do you know?

A. Don't ask me about that. My understanding is they were employees of the concern that failed to go out on strike.

Q. Well, your distinction then is that you are not against local strikebreakers but only foreign ones, is that it?

A. I wouldn't consider a man a strikebreaker that's employed and fails to go out and refuses to go out on strike, and agree with his fellow men, if he wants to stay in, and if he wants to work. What's wrong with him?

Q. Well, if the bosses feel that they can't get along with the A. F. of L. union and therefore refuse to employ the men who have been in their employment for a long time, that's what we call a lockout, isn't it?

A. That's a lockout.

Q. Now, you say that if those persons who come to take the places of the men locked out, come from Jersey City, it is all right, is that it?

A. I wouldn't brand them as strikebreakers. I have never—my interpretation of strikebreakers is as I outlined here about the rough house gorilla tactics, destroying property and life and disturbances—that's strikebreakers. Where there is a labor controversy and a dispute, then—and some of the men refuse to go out on strike, they want to work, they are entitled to protection. If in addition to that, there is some men idle that's in the neighborhood that wants to work, and they think that in order to obtain this type of work to support their family—I won't classify them as thugs and disturbing element. I won't say that they are not strikebreakers as christened by men in the unions today. They consider any man who takes a position—they don't call them strikebreakers; they call them scabs.

Q. So you will protect scabs but not strikebreakers, is that it?

A. I am not protecting anybody. I am protecting life and property.

Q. Well, now, in this particular case that we were discussing, Mr. Mayor, the police did afford almost continuous protection to the Hudson Builders Material Company and the Thomas Henry Company, didn't they?

A. I believe that's so.

Q. That Hudson Builders Material Company was owned by William V. O'Driscoll——

MR. MATTHEWS: Now, I object, if your Honor please, to the ownership of this company.

A. Oh, I don't know. I know he is in the building material business.

MR. MATTHEWS: As irrelevant.

A. (Continuing.) But I don't know anything about him having any strike or any trouble. I don't think he has any employees. If he has two, he has got a lot.

Q. He has been an important politician in Jersey City, hasn't he?

A. Very good, no better.

Q. Judge and sheriff and so on?

A. Yes. And what restricts him from going into private business?

Q. Nothing at all.

A. Well, why criticize him?

Q. I am not criticizing him. I am merely asking questions. If I were in his position I would like it too, I am sure.

Q. Did you succeed in locating the correspondence between you and Mr. Hoover, Edgar Hoover?

A. No. You issued a subpœna for that.

MR. HAMILL: No, we have sent for that correspondence and only twenty minutes ago a telephone call was put through to Jersey City, and the answer I have just

received is that the correspondence cannot be located. Now, let me say this, that we did all of this work as an act of goodness on our part toward counsel on the other side. We were not obliged to do it. And we will not take kindly to any criticism whatsoever. If counsel on the other side believe that they need the correspondence or need an explanation of it, why they can serve a subpœna on the director of public safety or those who have charge of the records, whoever they are, and discover it by testimony in open court. That is, discover the information as to the search that was made.

MR. FRAZER: I understood Mr. Hamill to accept the subpœna which we issued something over a week ago while the mayor was on the stand, with the idea that the documents would certainly be able to be found in that time.

MR. HAMILL: Well, assuming, Dean Frazer, that what you say is correct, my answer is this: and we did make diligent search, according to the reports I have received, and that a diligent search has not disclosed the existence in the files of those papers.

MR. FRAZER: All right. In other words, you haven't the papers.

MR. HAMILL: We haven't the papers. Yes, that's correct.

THE WITNESS: Let me answer this. Counselor, I don't think there is any communications. The system is that the Department of Justice has inspectors that go from police headquarters to police headquarters and make this investigation and there, upon the asking for certain records, if it is denied, they declare and make known their attitude right on the presence, in police headquarters. Then he reports back to his superior, and then he is advised not to go back to that station any more, because the records are not available as they say.

MR. HAMILL: Well, now, Dean Frazer, why do you say there are letters?

THE WITNESS: There is no letters.

MR. HAMILL: Who in this courtroom says there are letters?

MR. FRAZER: We said the records, correspondence, whatever it was, which showed the attitude between the City of Jersey City police and the statistical departments and Mr. Hoover's action in not longer incorporating in the records of his department the criminal statistics of Jersey City. That's all we want.

MR. HAMILL: Now, don't go for a minute. Of course, they won't send them to you. You said there were letters. Now, on what information did you base your subpœna that there were letters? From what sources did you get your information?

MR. FRAZER: I think it was something that the mayor said, that they wouldn't send them.

THE WITNESS: No, no.

MR. FRAZER: And there was a dispute——

THE WITNESS: Mr. Ernst said it, not me.

MR. HAMILL: In other words——

MR. FRAZER: There was a dispute as to who excluded them from Hoover's book, whether it was on Mr. Hoover's action or whether it was on the action of the Jersey City authorities.

MR. HAMILL: Let's have it understood. On a mere suspicion—worse than that; on a mere surmise, on a conjecture, you came to the conclusion that there were letters and took a chance of serving a subpœna wildly on me, and I in graciousness to you had a search made, and it is now settled on this record that there is no such correspondence.

MR. FRAZER: Very good. You have always been courteous, Mr. Hamill.

MR. HAMILL: Well, and I must say that in this instance you have been extremely—what shall I say?

THE WITNESS: Polite.

MR. HAMILL: Candid.

Q. Mr. Mayor, I show you a clipping from the *New York Times* of the 18th of June, which refers to the little dispute that Mr. Hamill and I have just been having, and follows it with an alleged statement from Mr. Hoover. Did you see that?

A. Yes, sir.

Q. Now, do you agree with it?

A. Well, I think that the head of the bureau was a little in error in that. I feel that it was because of us refusing to permit automobile accidents that developed in death, to charge them with murder. They insisted that we should charge them with murder, and of course that's where the controversy took place, and it discontinued. There was no report sent in by us.

Q. Well, Mr. Hoover——

A. If there were, they wasn't recognized, because we refused to put in murder, homicides, where automobile accidents took place.

Q. Well, all the other cities were under the same classification, weren't they?

A. No, the law—somebody passed a law in the State of New Jersey, compelling at the arresting of every accident where death occurs, that the person must be charged with murder. Now, I have disagreed with that, even though it is the law. I can never condone myself to the fact that a woman or a boy or a girl should be charged with murder in an automobile accident; and I don't allow it because even though it is the state law, I think it is very, very unfair.

Q. But the City of Newark is under that disadvantage?

A. Well, if they do that, that's up to them. I don't care.

Q. So that if you exclude yours from your records and the City of Newark complies with the law, then the crime record of Newark appears much worse in comparison to yours than it is.

MR. MATTHEWS: I object, if your Honor please.

A. We went to the prosecutor of the pleas, we went to the judges and had a conference with the judges, and we called the attention of the Court, called the attention of the district attorney, to the unfairness of this law, and we asked them to advise us how to proceed, that we thought it was very unfair, and they worked out a method whereby these people are not charged with this murder.

Q. Well, now——

A. That's what led to the entire dispute between Mr. Hoover's department and the City of Jersey City.

Q. Now, Mr. Hoover is quoted here as saying——

A. Up to that time, Counselor, every report that the Department of Justice had made showed Jersey City with the lowest in this country.

Q. The lowest what?

A. Of crime.

Q. Mr. Hoover is quoted as saying Jersey City has continued sending him monthly reports for the Bureau since 1935.

A. My understanding, Counselor, was that the controversy that took place discontinued any further reports because they were not accepted.

Q. You don't know, then, whether it is a fact that these reports are continuing or are rejected by Hoover, as he states?

A. Oh, they are not continuing.

Q. You are sure of that?

A. I am sure of that.

Q. Now, Mr. Mayor, I understood you to say that until the recent troubles starting with your so-called invasion of Jersey City in——

MR. MATTHEWS: You do not mean *your invasion?*

MR. FRAZER: It was his expression.

MR. MATTHEWS: What he calls *invasion.*

Q. That you had never had any trouble with the so-called constitutional rights of free speech, freedom of assembly and freedom of the press?

A. I don't know just what you are referring to. If you are referring to some little minor matter——

Q. I am asking you whether there was any period when the question of free press and free speech and freedom of assembly became a very much discussed point in Jersey City.

A. Yes; this present one.

Q. No; long before that.

A. Long before it?

Q. I call your attention to a photograph and ask you whether you can identify the scene and the approximate time from the picture?

A. What is this?

Q. Isn't that Journal Square?

A. I don't know; it looks like it.

Q. You see over here the sign.

A. That looks like Journal Square.

Q. That is your name there, isn't it, and some commissioners?

A. Yes. It looks like them—— It says to reelect——

Q. Re-elect whom?

A. Re-elect Frank Hague.

Q. There is somebody else there?

A. Yes, Michael I. , John Fagans, William E. Quinn, Arthur Potterton—what is this?

A. I don't know; that looks like a political meeting.

Q. It looks like it to me, too.

A. Is that Jeff Burkitt? That looks like Jeff Burkitt.

Q. Can you see what is on there?

A. *Free speech.*

Q. And *free press?*

A. That looks like an act of Jeff's.

Q. Do you know whether there was any violence at that meeting?

MR. MATTHEWS: Let us have the date.

MR. FRAZER: I don't know the exact date. The Mayor was in that campaign, obviously.

MR. MATTHEWS: The Mayor has been in every campaign.

Q. Mr. Mayor, what campaign was it in which these gentlemen were running with you that you have just mentioned?

MR. MATTHEWS: They ran together several times.

A. They ran in 1929. Jeff was quite an actor in that campaign.

Q. Then he was arrested in that campaign, was he, for making a speech in front of the court house?

A. No, Jeff was not arrested; I don't think so. In front of the court house? There was some trouble at the court house. We had a big rally at the high school two blocks away and I believe there was some little controversy at the court house steps because they tried to hold a meeting——

Q. He was arrested and tried and convicted, as he was recently, and had it set aside by Judge Brown on appeal?

A. There was an arrest and a conviction and there was an appeal and it was set aside.

Q. The charge was the same as the present charge?

A. No, no. He kicked a police officer in the chest this time. There is a vast difference in that. His language was something terrible.

Q. I am told there is a man named Peterson in here.

A. Who is Peterson?

Q. I thought you knew him.

A. I know the officer standing there is apparently very happy. There is no trouble, apparently. Here are some other officers and some others here.

Q. Is it surprising to you that the officers standing there are standing there quietly while people are throwing things?

MR. MATTHEWS: I object to that. There is the picture.

A. The only time they ran afoul of anything was on the city hall steps early in the campaign. Somebody hit him with an egg or something.

Q. And he was arrested in that campaign, wasn't he?

A. I don't know; I don't think he was arrested that time. He got a bath for the first time in ten years.

MR. FRAZER: I ask that be marked for identification. Is there any objection to its going into evidence?

MR. MATTHEWS: I have.

MR. FRAZER: May I ask whether your objections go to the relevancy or to the method of proof?

MR. MATTHEWS: Both.

MR. FRAZER: I ask that it be marked for identification.

(Marked Exhibit P-48 for identification.)

Q. Mr. Mayor, you wouldn't know whether this meeting at about this time, whether that meeting was held at any particular time by identification of any of the people on the stand, or whether it was a meeting called at the behest of the veterans?

MR. MATTHEWS: I object to this attempt to get the picture into evidence.

MR. FRAZER: No, I am going to make some further successful attempts.

A. During that meeting there were five hundred characters. I cannot single out any particular one. The records will show that we granted Burkitt and his crowd four hun-

dred or five hundred permits to hold meetings. We didn't deny any privilege of free speech to them.

Q. Do the records indicate any disturbance at these meetings?

A. No. As I say, only one meeting at the city hall.

Q. And wasn't Peterson, whom I was referring to, a gentleman on the stand, on the platform there, although I do not know him personally, and isn't he the Peterson who signed the letter to Commissioner Casey of December 27, 1937 which is in evidence here?

MR. MATTHEWS: Is there any question pending?

A. I can't prove that; I don't know him.

Q. You don't know him personally?

A. No.

Q. So you couldn't recognize him in any event, could you?

A. No.

Q. Now, I have here the list of permits apparently, Mr. Mayor. Can you show me any permits to Jeff Burkitt in 1929?

A. No, it wouldn't be on that—there was some party that he had——

MR. HERSHENSTEIN: I object to that.

Q. What was the name of his party?

A. He had so many parties that I wouldn't know.

Q. He was a Jeffersonian Democrat at that time, wasn't he?

MR. HERSHENSTEIN: If your Honor please, may I point out on April 27, 1926, Jefferson Burkitt, the Jefferson party had a permit to hold meetings; another on April 27th, May 10th, Jefferson Party, Burkitt, permission to hold meetings, June 12th; Jefferson Burkitt, hold meeting Saturday night——

THE WITNESS: You will find he had meetings every night; two or three meetings, sometimes.

MR. HERSHENSTEIN: April 9th, Jeff Burkitt meeting; May 7th, May 9th, May 13th, all Jeff Burkitt, another May 13th, Jeff Burkitt in the Fifth Precinct tonight. That is about ten or twelve, isn't it?

MR. FRAZER: Yes, just about.

MR. HERSHENSTEIN: I think you will find another dozen if you wade through it.

THE WITNESS: I am talking now during his presence in Jersey City. He comes from out of town.

Q. Will you look in 1929?

MR. FRAZER: Mr. Hershenstein, would you mind looking in 1929 and see whether there was any permit granted to the Veteran's Independent Association in April or May of that year?

Q. Mr. Mayor, if you take my glasses on top of your own, they are just magnifying glasses, you will probably read what is at the bottom. You are not going to hang anybody on that.

A. No, I am not going to hang anyone.

Q. I don't suppose you are.

MR. HERSHENSTEIN: There are two of April 24, 1929, Jeff Burkitt——

MR. FRAZER: That was for the Veterans?

MR. HERSHENSTEIN: April 18, Burkitt party, Jackson and Orient; April 18, Jefferson Burkitt, Jackson and Orient.

Q. I will not ask you to bother with this any longer. I was trying to get a verification of the date of the meetings.

MR. HERSHENSTEIN: The question was whether there was any information about Mr. Burkitt.

MR. FRAZER: I have no further questions.

MR. MATTHEWS: I am finished with you, Mr. Mayor, as far as I am concerned.

THE WITNESS: Judge, I would like to be permitted to make a public statement involving Mr. Ernst.

THE COURT: Not from the witness stand.

THE WITNESS: It involves the court.

THE COURT: No.

THE WITNESS: I have proofs; I have records.

THE COURT: You will have to offer it through your counsel in evidence.

THE WITNESS: I submit myself to be examined by everyone and I feel very much disappointed if I am not permitted—he was discussing his——

THE COURT: You must confer with your counsel first.

MR. MATTHEWS: You may confer with me and then I will confer with his Honor.

THE WITNESS: It involves this gentleman and involves the integrity of this court.

THE COURT: I will adjourn until twelve o'clock.

MR. MATTHEWS: Then may I see your Honor?

THE COURT: Yes, you may come to my office.

(Short recess.)

(Following a short recess.)

THE COURT: Go ahead. How many more witnesses have you, Dean Frazer?

MR. FRAZER: Just one, a very brief one.

THE COURT: Will you call him, please.

MR. FRAZER: Mr. Callahan.

WILLIAM CALLAHAN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

MR. MATTHEWS: Just a minute, Judge Clark. I wish you would instruct the newspaper men—this is a good gentleman, all right, but I can't tell him, frankly, about our conference or anything of that kind. I don't want to be cross with him or anything of that kind. He wanted to know about the conference that the Court had. I said he would have to talk to the Court, if there was any conference.

THE COURT: No, that would not be proper. I think I have been very patient with the newspaper men, and I am sure you won't violate my admonitions. Go ahead.

MR. FRAZER: Mr. Callahan has been sworn, I think.

THE CLERK: Yes, he has.

Q. Mr. Callahan, there were certain letters exchanged between you and Director Casey in relation to an application which you made on behalf of the Catholic Worker, as I understand it?

A. Yes.

Q. For leave to speak in Jersey City?

A. That's right.

Q. And under the date of May 4, 1938, your application was denied?

A. Yes, sir.

Q. Did you at any time return to Director Casey's office for the purpose of discussing the permit further?

A. I did.

Q. Do you remember when that was?

A. It was on either the ninth or tenth of May.

Q. Whom did you see there?

A. I saw a person who purported to be the secretary of Commissioner Casey.

Q. Do you know what his name was?

A. I didn't know his name then; I understand now his name is——

MR. MATHEWS: I object to the identification.

MR. FRAZER: I suppose that we usually learn a person's identity by having them introduced to us or learning from others. I suppose in the last analysis all the names of persons we find out are by hearsay.

By THE COURT:

Q. What is the fact? What happened?

A. The man represented himself to be Commissioner Casey's secretary.

Q. Would you know him again if you saw him?

A. I think so.

By MR. MATTHEWS:

Q. Is he in court, son?

A. I don't know.

MR. MATTHEWS: Is Director Casey's secretary here in court?

(No response.)

MR. MATTHEWS: I mean that for the purpose of identification only, your Honor.

By MR. FRAZER:

Q. This took place in Director Casey's office, as I understand?

A. Yes.

Q. What did the gentleman who represented himself to be Mr. Casey's secretary say with relation to the permits, if anything?

MR. MATTHEWS: I object to that.

THE COURT: You will have to have him here if there is any dispute about it.

Q. Did you obtain the permits?

A. No, I did not.
Q. Did you ask for them?
A. Yes, I did.

MR. FRAZER: That is all.

MR. MATTHEWS: No questions.

MR. FRAZER: I have another question to ask.

By MR. FRAZER:

Q. Did you state the names of the speakers that you wished to have address that meeting?
A. I didn't say.

MR. MATTHEWS: I object to that.

MR. FRAZER: He is testifying to his own actions.

MR. MATTHEWS: That is a statement he made to an unidentified person.

By THE COURT:

Q. You gave your name. Is that right?
A. Yes, sir.

By MR. FRAZER:

Q. In writing?

MR. MATTHEWS: I object to that.

THE COURT: On a written piece of paper?

THE WITNESS: On the stationery of the Catholic Workers.

THE COURT: We have had that several times, according to my recollection, Mr. Frazer.

MR. FRAZER: I think in the original correspondence, sir, the names of the speakers were not mentioned.

MR. MATTHEWS: Well, if that is the case, then the best way to do it would be to produce that record; and if he has it, it may be produced—I would have no ob-

jection. But I am a bit afraid of a conversation with an unidentified person.

THE COURT: Did you give him a sheet of paper?

THE WITNESS: I did.

THE COURT: Have you got the paper here?

THE WITNESS: No. I handed it in to Mr. Casey's office.

THE COURT: Then you will have to get that.

MR. FRAZER: We have subpœnaed those records, sir, and they have not been produced.

MR. MATTHEWS: Spaulding, that was before my time, so I don't know.

MR. FRAZER: All right; that is true, however.

MR. MATTHEWS: The record, gentleman—may I speak to my associates?

THE COURT: Yes, certainly.

MR. MATTHEWS: The record, gentleman, of an application for a permit by the Catholic Worker which was followed by a visit at which a letter was handed to a man in Director Casey's office, giving the names of the speakers; that record is sought and as is alleged has already been subpœnaed.

MR. FRAZER: I am offering secondary evidence since that was not produced under the subpœna and notice to produce, which we gave.

THE COURT: Well, you will have to have the secretary—do you know the man's name, the secretary's name? Did you say that?

THE WITNESS: Only by hearsay. He didn't tell me.

MR. MATTHEWS: You would identify him, though, young man, if you saw him, wouldn't you?

THE WITNESS: I believe so.

THE COURT: Well, tell us his name.

MR. MATTHEWS: Yes, what is it? I don't know. What is the name of the secretary to Director Casey?

THE COURT: I thought that was testified to the other day, wasn't it?

MR. ROONEY: Ask the witness. Ask the young man.

MR. MATTHEWS: He doesn't know.

THE COURT: What did you hear his name was?

THE WITNESS: Daly.

MR. MATTHEWS: Mr. Daly. Is that the name of the secretary of Director Casey?

MR. ROONEY: Daly, yes.

THE COURT: The Commissioner testified to that. That is the reason I know it.

MR. MATTHEWS: All right. That is the secretary's name, yes.

MR. FRAZER: Yes.

MR. MATTHEWS: We haven't any identification. He could be subpœnaed easily enough.

Q. What does the man look like, Mr. Callahan?
A. He is a tall man about six feet or over, I should say.

MR. MATTHEWS: Well, is the purpose of this testimony only to give the names of the speakers?

MR. FRAZER: That's all.

MR. MATTHEWS: Is that all?

Well, we can save you the trouble of producing Daly.

MR. FRAZER: That's all.

MR. MATTHEWS: If it is just for that. We don't want any conversation between——

MR. FRAZER: No, all we want is to show——

MR. MATTHEWS: All right.

MR. FRAZER: —that this man went back and renewed his application.

THE COURT: Well, tell us the names of the speakers.

MR. MATTHEWS: The names, yes.

THE WITNESS: The names of the speakers?

THE COURT: Yes, the names of the speakers that were on that paper.

THE WITNESS: Timothy O'Brien and myself.

MR. MATTHEWS: And you are Mister——

THE WITNESS: Callahan.

MR. FRAZER: Callahan. That's all.

MR. MATTHEWS: No questions.

MR. FRAZER: I would like to offer in evidence two cards which were marked during the course of the trial in identification. One is the Fairmount Hotel card, which was referred to in the testimony——

MR. MATTHEWS: That was before my time.

MR. FRAZER: Yes; and the other is this card which the Mayor identified.

MR. MATTHEWS: I have no objection.

(Received and marked Exhibits P-5 and P-9.)

MR. FRAZER: Now, in the matter of the picture which was just shown to the Mayor, if it please the Court, we are not presently able to identify it fully,

and I was wondering whether Mr. Matthews would object to our bringing such proof in later, merely for the purpose of bringing this thing up, the question of the offer of the picture.

MR. MATTHEWS: I don't see how the picture would have any relevance, if your Honor pleases, even though it is not presently possible.

THE COURT: Well, he is asking you if——

MR. MATTHEWS: I suppose that it should be offered before their case is closed, if it is going to be closed.

THE COURT: Well, what do you want to offer with respect to the picture?

MR. FRAZER: I simply want to offer the testimony of the man who took the picture and who was present at the meeting, to testify what happened on that occasion.

MR. MATTHEWS: I think that ought to be done now.

MR. FRAZER: I am not in a position to do so now.

MR. MATTHEWS: Well, you could by one o'clock, couldn't you?

MR. FRAZER: No, I think I might have to a longer time.

THE COURT: All right. If it would be relevant, I suppose you could offer it on rebuttal.

MR. FRAZER: Very well, then, I will reserve it for rebuttal.

MR. MATTHEWS: All right.

THE COURT: That closes the complainants' case?

Plaintiffs Rest.

MR. MATTHEWS: At this time, if your Honor please, may I ask for at least twenty-four hours' adjournment, and if possible, forty-eight hours, in order to prepare the motion to dismiss. Mr. O'Mara has made the request particularly for forty-eight hours. I told him if we could not get forty-eight hours and could get twenty-four, that it might do. We want to move to dismiss predicated on the evidence in the case. I have already analyzed a large part of the testimony that I participated in.

Mr. O'Mara has just returned to the room and may I ask to have the stenographer read the motion thus far to him?

(The reporter reads Mr. Matthews' motion.)

MR. MATTHEWS (Continuing.) And the testimony that Mr. O'Mara has participated in he has already partially analyzed. He was called to Baltimore at the end of last week and the beginning of this week, and that is the reason that the adjournment of forty-eight hours is asked for by Mr. O'Mara.

MR. O'MARA: I would like to join in the application, Judge Clark. I feel that we need that length of time to prepare the motion, which is an important one.

THE COURT: Some of the argument is already in.

MR. MATTHEWS: I raised a point yesterday—it never came into the case, that the testimony did not warrant it, but the testimony latterly in the case did warrant raising that point.

THE COURT: Can we occupy ourselves in the meantime with the question of subpœnas? I am not intending to inflict a hardship on counsel, of course.

MR. MATTHEWS: That would presuppose that we would need them.

THE COURT: Not necessarily. I suppose in any motion in the simplest case you always provide for both contingencies.

MR. ERNST: If your Honor please, it would be quite embarrassing to us to have any adjournment. I know of no case that I have ever been engaged in in which there was such a request made, particularly when in the first pages, the first ten or twelve pages of the testimony, if you will read them, you will see that counsel for the defendants on five of the six, or six of the seven points in the bill, as we read their statement, conceded either that the acts—either were not committed, or that if they were committed would be discontinued. There is a sufficient body of law to support the position that when counsel have so stated in open court that the court can take those statements into consideration and deny the defenses in those respects.

THE COURT: Have you amended the pleadings yet?

MR. ERNST: May I add one more thing, if the Court please? We have the cases in court along that line. In our opinion the statements foreclose any defenses and under those circumstances, to ask for delay is quite embarrassing to us. We also have matters to take care of elsewhere and without any prejudice to Mr. Matthews it seems to me that we can proceed tomorrow. Or he may make such motions as he sees fit and file briefs tomorrow—making the motions today and filing the briefs tomorrow.

We will make our motions today as well.

MR. O'MARA: May I say a word in reference to what Mr. Ernst has said concerning the first ten or twelve pages of the testimony? I assume he refers to the statement of Mr. Hamill in the opening of the case which later became the subject matter of an order to be drawn by the parties if they could consent to it. That was done with the distinct understanding that if the parties could not reach a conclusion satisfactory to all counsel that this case was to proceed to trial. All of the associates raised that point in the pleadings and we were not foreclosed from any defense which we had.

THE COURT: Of course I will consider only testimony in the motion to dismiss.

MR. ERNST: We find ample law that where counsel makes a statement it can be taken in lieu of testimony. We have the cases here.

MR. FRAZER: I am calling your Honor's attention to the fact that it was made by way of compromise. That was your Honor's contention, to see whether we could embody the statement made in Mr. Hamill's remarks. There was no claim whatsoever——

THE COURT: As you know, Dean Frazer, there was no effort to conceal the efforts of all persons to settle the case. The case was not settled and it has gone to trial, and therefore will have to be passed upon by the Court. I am disinclined, frankly, to harass counsel when they must be ready with an elaborate record. There is a short space of time, however, inasmuch as it is noon now and we have only the afternoon. I will give you one day beyond this, and I will insist that you be ready on Thursday morning.

MR. MATTHEWS: Thank you, your Honor, for that.

THE COURT: I will insist that you have the petitions with respect to the subpœnas filed so that I may also consider them if I have to consider them, and also your amendments if I have to consider them. In other words, all the legal issues should be fully exploited by Thursday.

MR. MATTHEWS: May I say that to my confreres?

THE COURT: In other words, the motion comes first. If that is decided adversely to the defendants, then the question of the subpœnas comes next.

MR. MATTHEWS: Doesn't your Honor think that we ought to have the amendment on the record first?

THE COURT: Yes, the amendment first.

MR. ERNST: If your Honor please, in view of the fact that you are granting the adjournment, may I ask that we be supplied with the proposed amendments, with the points

of the motion, and copies of the petition by tomorrow noon so that we are in a position to give them some consideration?

THE COURT: Yes.

MR. MATTHEWS: Will you look to Mr. O'Mara for that, sir?

MR. ERNST: I would like to file with the Court the affidavit in regard to the proposal to hold a witness in this case in contempt and giving a copy of it to Mr. O'Mara. Briefs will be here this afternoon. If we are adjourning, I will submit the briefs tomorrow morning and copies to Mr. O'Mara.

MR. O'MARA: May I submit answering briefs?

THE COURT: Yes.
We will adjourn until Thursday morning at 10:30.

(Thereupon an adjournment was taken to Thursday morning, June 23, 1938, at 10:30.)

Thursday, June 23, 1938.

Case continued.

Appearances as before.

MR. MATTHEWS: Your Honor please, I wish to offer the amendment prepared by my associates. A copy was given to Mr. Ernst, I understand, yesterday.

THE COURT: Will you mark it filed, Mr. Jaeckel?

MR. MATTHEWS: Now, your Honor asked that all other legal questions in process of discussion before you be settled this morning, and as I understand the record will show that your Honor has directed, and we agree, that all of the subpœnas except those calling for the CIO records, the American Civil Liberties Union records and the Garland Fund records, should have been directed to different people; and

that new subpœnas accompanied by petitions should issue. That we agree to. We desire to stand on the subpœnas originally issued in both the CIO, the American Civil Liberties Union and the Garland Fund. In other words, we wish to maintain, with respect to the Court, that they are sufficient in law.

Now, if your Honor is of the opinion that they are not, then we merely ask your Honor to give us an exception to that ruling.

THE COURT: Well, of course, Mr. Matthews, I haven't even considered it.

MR. MATTHEWS: Oh; then we are ready to proceed with the defense, after that. Those were the three matters that——

THE COURT: Yes; but I understand that you wish to stand on the subpœnas as written.

MR. MATTHEWS: The subpœnas as they were, with reference to those three only, your Honor.

THE COURT: Yes. Well, I will have to examine the subpœnas with more care and make some examinations into the authorities on the point.

MR. MATTHEWS: Yes.

Now, I desire, if your Honor please, to offer in evidence the following exhibits which have been marked for identification.

MR. ERNST: Your Honor, may I just interrupt a moment? I can let you have the subpœnas, unless copies are available to you.

MR. MATTHEWS: Very good.

THE COURT: I think I gave back the copies that were so kindly given to me by counsel over the week end.

MR. ERNST: Yes. I have the four subpœnas here, addressed to Ward, Ernst; Carney and Baldwin, which I take it are the ones to which Mr. Matthews now refers.

MR. MATTHEWS: I would like to look at the Baldwin one, sir.

MR. ERNST: Plus one that may be within the scope of his remarks, the one issued to Arthur Garfield Hays, whom I represent on this matter.

MR. MATTHEWS: May I interrupt you? It is only as to the Civil Liberties Union. It isn't that International Committee that is on there.

MR. ERNST: No, I understand that.

MR. MATTHEWS: All right.

MR. ERNST: But, you see, the Civil Liberties Union is on various subpœnas.

MR. MATTHEWS: Yes.

MR. ERNST: It isn't only Baldwin.

May I also say, your Honor, I will be glad to supply a brief tomorrow. I have briefed the law on the subject of these subpœnas. I haven't got it in comprehensive brief form, but I have all the references to the cases.

THE COURT: I looked up some law the other day, but, as I say, I hadn't completely considered it.

MR. MATTHEWS: The first exhibit that I desire to offer in evidence is the Fish report in those matters that have been testified to already, and I have the certification of South Trimble, attached to it, your Honor. It is the only one that hasn't been marked for identification.

MR. ERNST: I understand, your Honor, it is offered in evidence for the sole purpose of proving that Mayor Hague had looked at it on certain occasions.

MR. MATTHEWS: And it had helped to form his state of mind.

MR. ERNST: That's right; no objection.

(Received and marked Exhibit D-27.)

MR. MATTHEWS: I also wish to offer in evidence D-1 for identification, which is the reference to a speech made by counsel for the petitioners, Mr. Ernst, and attached to it in the form of D-2 is Mr. Ernst's denial that he is correctly quoted.

(Received and marked Exhibit D-1 in evidence.)

MR. MATTHEWS: Also I offer for the same purpose D-2 for identification.

MR. ERNST: No objection.

(Received and marked Exhibit D-2 in evidence.)

MR. MATTHEWS: Also the five photographs of the gentlemen who were arrested in Jersey City and were searched and a gun was found on them, D-3, 4, 5, 6 and 7.

MR. ERNST: The purpose of this offer is what? I don't understand. There is no evidence, as I understand it, that there is any connection between those people and the parties plaintiff.

MR. MATTHEWS: There was a discussion and allegation that the cars were searched—shall I say ruthlessly or unwisely and so forth and so on.

MR. ERNST: I take it this offer is made on the theory that in a particular case a search indicated an allegation that a gun was found. As I recall the testimony there has been an indictment but no trial.

MR. MATTHEWS: It is offered for the same purpose that it was offered for identification, your Honor.

THE COURT: They will be admitted.

(Received and marked Exhibits D-3, D-4, D-5, D-6 and D-7 in evidence.)

MR. MATTHEWS: I wish to offer Exhibit D-8 for identification, which is the records of those gentlemen because there was some discussion that the record on the back of

the card showed the same individuals in the photos just offered.

MR. ERNST: I take it that this offer is also made on the theory that a car was picked up and that this might be some proof that the suspicion in connection with the search of the car and the pick-up of the car may be well founded.

MR. MATTHEWS: It is offered, your Honor please, as I say——

THE COURT: Well, I imagine—it doesn't seem necessary to elaborate the point—I imagine the police in all cities of the country search cars occasionally for criminals.

MR. ERNST: I want to make plain there is no imputation here or implication that these records are in any way related to the parties plaintiff.

THE COURT: Oh, I don't think there was any such assertion.

MR. ERNST: All right, then, no objection.

(Received and marked Exhibit D-8 in evidence.)

MR. MATTHEWS: We also offer D-9, which is a picture of Congressman O'Connell. The subscription was read into the record, "Congressman Jerry O'Connell with Communist Herbert Benjamin and Socialist David Lasser conferring on possible action against Mayor Hague of New Jersey."

MR. ERNST: I take it that this offer in evidence is made on the basis that Mayor Hague saw that piece of paper and relied on it. No objection.

(Received and marked D-9 in evidence.)

MR. MATTHEWS: D-10 is the Garland Fund report from the library.

MR. ERNST: No objection.

(Received and marked Exhibit D-10 in evidence.)

MR. MATTHEWS: D-11 is offered——

MR. ERNST: I take it that that document also is being offered also only on the ground that it came to the knowledge of Frank Hague and that he used it in the same way to make up his mind.

MR. MATTHEWS: D-11 is offered for the ownership in 1932 and management of the New Masses, and your Honor gave us permission to photostat it. That is the section.

MR. ERNST: This, I take it, is not offered in any way as proof of anything other than the fact that these pages came before the eyes of Frank Hague and that he read them, and that he testified that he as a result made up his mind in certain respects; is that right?

MR. MATTHEWS: The ownership of the New Masses is there.

MR. ERNST: No, no, don't let's start that stuff.

MR. MATTHEWS: No, I object to that statement.

MR. ERNST: Well, I asked you a civil question.

MR. MATTHEWS: I have answered you civilly, that it is——

MR. ERNST: And I want a ruling.

THE COURT: I am frank to say that while counsel were exchanging questions among themselves I didn't hear that.

MR. ERNST: Your Honor please, there is an offer in evidence here, I made the statement that I had no objection if I understood that these photostats were being offered in evidence, not as proof of the truth of what is in the article at all but merely for the purpose of indicating that these pages came before the eyes of one Frank Hague; and that he testified as a result they helped him to form a judgment.

MR. MATTHEWS: They were offered to prove an affidavit that is written right in the pages, your Honor please.

MR. ERNST: Oh!

MR. MATTHEWS: An affidavit of ownership of the New Masses at that time.

MR. ERNST: I object to the introduction, if it is for any such purpose.

THE COURT: What is the purpose of it, Mr. Matthews?

MR. MATTHEWS: Your Honor recalls that there was an affidavit down in the lower corner, you know, as to the purchase of the New Masses by the Garland Fund in 1932, or the ownership in 1932 by the Garland Fund, and the names of the owners were on it.

THE COURT: Yes; there was an affidavit, I remember.

MR. MATTHEWS: Yes.

THE COURT: The ordinary ownership affidavit.

MR. MATTHEWS: Yes, your Honor. That is what that is offered for.

MR. ERNST: I object, your Honor. In the first place, there is no relationship between the Garland Fund and the record, and the parties plaintiffs, or anything in relation thereto. In the second place, the way to prove an ownership is not through that method. Now, what happened was these documents were presented to the Mayor, in order to get into the record the material upon which he made up his mind; and I must object to the introduction of any of this material, leaving any implication whatsoever that there is a word of truth conceded in any one of these documents.

MR. MATTHEWS: That was an added feature——

THE COURT: I think that is understood; of course, that isn't proof of ownership, as you know, Mr. Matthews.

MR. MATTHEWS: No, if your Honor wants to accept it, please, on the ground that Mayor Hague was conversant with that fact——

THE COURT: That is right.

MR. MATTHEWS: —all right.

(Received and marked Exhibit D-11 in evidence.)

MR. MATTHEWS: This D-14 pamphlet is offered, only in the places marked in the record, and only for the purpose of influencing the Mayor's state of mind.

MR. ERNST: No objection.

(Received and marked Exhibit D-14 in evidence.)

MR. MATTHEWS: The *Newark News* clipping or sheet of November 23, 1937, for the same purpose.

MR. ERNST: No objection.

(Received and marked Exhibit D-15 in evidence.)

MR. MATTHEWS: The picture of Mr. Thomas, as the subscription says, giving a Communist salute, for the same purpose.

MR. ERNST: The purpose being that Mayor Hague saw the paper——

MR. MATTHEWS: That it influenced Mayor Hague to refuse——

MR. ERNST: No, Mayor Hague saw the picture.

MR. MATTHEWS: Yes.

MR. ERNST: And used it as part of the basis for determining his mind.

MR. MATTHEWS: Yes.

(Received and marked Exhibit D-16 in evidence.)

MR. MATTHEWS: Now, there are a series of newspaper clippings, running from 17 to 26 inclusive, which are the ones that I had the last time, photostated, and they are clippings of 1937, which show allegedly in the clippings a con-

nection between CIO and radicalism, but Mayor Hague said he had read those and from reading those they formed his mind in his preventing the invasion of Jersey City by the CIO.

MR. ERNST: Were these identified?

MR. MATTHEWS: Yes.

MR. ERNST: Marked for identification?

MR. MATTHEWS: Yes, every single one.

MR. O'MARA: Marked singly, Mr. Ernst, from 17 through 26, inclusive.

MR. ERNST: No objection, if it is on the sole basis that they came to his attention.

MR. MATTHEWS: Now, there is a copy of a writ of mandamus and a return in the case of Thomas v. Casey. The return has been drafted and will be in final form this afternoon, and that is offered in evidence in this case.

MR. HERSHENSTEIN: That will be marked what?

THE CLERK: D-17 to D-26 are now in evidence.

(Documents referred to received in evidence as D-17 to D-26, inclusive.)

MR. HERSHENSTEIN: And we are offering a copy of a writ and a return now. What numbers will they take?

THE CLERK: New exhibits?

MR. HERSHENSTEIN: Yes. If they may be considered as marked in evidence now, we will give the Court and counsel a copy.

MR. ERNST: I would like to see the exhibits before they go in evidence. You can bring them in this afternoon.

MR. HERSHENSTEIN: I will be glad to give Mr. Ernst a copy.

MR. ERNST: If your Honor please, there is an offer now being made. Maybe Mr. Matthews would like to repeat it.

MR. MATTHEWS: I would like to read it, because it is a new exhibit to me and I want to read it correctly; a copy of the writ of mandamus and the return thereto in the case of Thomas v. Casey. The return has been drafted, Mr. O'Mara says, and will be in final form by this afternoon. We ask your Honor to accept it, the draft of the return, now, as an exhibit, or whichever way your Honor wishes to leave that.

MR. ERNST: Your Honor, I would like to object on the ground it is entirely immaterial.

THE COURT: Well, I am not sure that it is material, but that ought to develop in the legal argument, I should think.

MR. ERNST: Oh. You mean when the documents are brought forward?

THE COURT: No, on the legal argument of the case.

MR. ERNST: I see. I would like an exception to your Honor's ruling on the admission.

(Which exception is allowed and sealed accordingly.)

(Seal)

THE CLERK: They will be marked D-28 and D-29.

MR. MATTHEWS: The defense rests.

MR. ERNST: May we have about five minutes' adjournment?

THE COURT: Do I understand from that, when you say the defense rests, Mr. Matthews, that you don't intend to offer, if I should rule in your favor on the question of the subpœnas——

MR. MATTHEWS: If you should rule in our favor today on the question of the subpœnas, we would like to have the documents and offer them in evidence.

THE COURT: Well, that is what I meant to inquire.

MR. ERNST: Which documents?

MR. MATTHEWS: Well, we would like to look at them first and see.

MR. ERNST: If your Honor please, may I indicate that the law is clear that on a subpœna duces tecum the party subpœnaing has no right to look through the documents in any event, to find out which ones to offer. They must be presented to the Judge first, as I understand the practice, in all jurisdictions. The question then is passed on by the Judge, as to the materiality of any particular document.

MR. MATTHEWS: Well, we will meet that, if that is the law, by saying we will accept the documents subpœnaed and offer them in evidence as are.

MR. ERNST: May we have an adjournment, your Honor, for about five minutes?

THE COURT: Yes.

MR. ERNST: We had understood that there would be all kinds of motions today and forty-eight hours were needed for motions to dismiss, et cetera. I would like to take just about five minutes to decide whether we want to go on with some more evidence.

MR. MATTHEWS: May I just say there that my associates informed me, while I was in the law library, that they had notified Mr. Ernst that the motion to dismiss would not be made. Mr. O'Mara called me later and told me he had notified your Honor.

MR. ERNST: That is perfectly true.

THE COURT: Yes.

MR. ERNST: Perfectly true.

THE COURT: Yes, I knew about it.

MR. ERNST: So we are somewhat unprepared today by the position taken by the counsel for the defense that they will put on no witnesses.

MR. MATTHEWS: We will accommodate him for any adjournment he wants.

MR. ERNST: And I would like a few moments. There were statements made in the press that there would be a day or two taken, I was told, by witnesses. So I would like ten minutes.

THE COURT: Certainly. Mr. Matthews, may I see the amended pleadings now?

MR. MATTHEWS: May I say this, your Honor, that if my will had not been followed, it would have been three days. I have closed the case, since I am responsible for its trial, and my associates finally agreed with me, at midnight, last night.

MR. ERNST: If I may have ten minutes.

THE COURT: Oh, certainly, any time you want.

(Short recess.)

MR. ERNST: Your Honor please, you will recall that we had on the stand a Miss Opitz with respect to testimony as to a meeting in Newark. We understood your ruling that that testimony was not properly to be introduced at that time but might come up as a matter of rebuttal. We now, just to have the record complete, would like to get a ruling from the Court in view of the fact that no defense has been put in, as to whether that testimony would now be proper as rebuttal. I would be less than frank with the Court if I did not indicate that there is nothing to rebut on it, but I want to have the record clear that we want to again put on the stand Miss Opitz and the group that met in Newark along the lines we indicated in the testimony.

THE COURT: As I remember it, there were no questions asked, were there, with respect to a connection or any alleged connection of the Newark meeting.

MR. ERNST: There were questions asked but they weren't allowed, as I recall it,—Mr. Matthews can confirm it.

THE COURT: No, no, I don't think there were any questions asked by anybody.

MR. MATTHEWS: No questions asked.

MR. ERNST: No, no questions actually asked of Miss Opitz.

THE COURT: No, I mean any questions asked of any of the other witnesses.

MR. ERNST: No, there weren't.

THE COURT: My view at the time was that if those questions were asked and there had been a denial of it, that then perhaps Miss Opitz's testimony would have been relevant, otherwise not. So I don't believe it is relevant and you may have an exception.

(Plaintiffs' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

(Discussion.)